

MICHAEL D. MURPHY (SBN 224678)  
mdmurphy@foxrothschild.com  
MATTHEW FOLLETT (SBN 325481)  
mfollett@foxrothschild.com  
JESSICA NWASIKE (SBN 343087)  
jnwasike@foxrothschild.com  
FOX ROTHSCHILD LLP  
Constellation Place  
10250 Constellation Boulevard, Suite 900  
Los Angeles, California 90067  
Telephone: 310.598.4150  
Facsimile: 310.556.9828

Attorneys for Plaintiff and Counterclaim  
Defendant SHAKEY'S PIZZA ASIA  
VENTURES, INC. and Third Party Defendants  
CINCO CORPORATION, PC  
INTERNATIONAL PTE LTD., and SPAVI  
INTERNATIONAL USA, INC.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SHAKEY'S PIZZA ASIA VENTURES,  
INC, a Philippines corporation,

Plaintiff,

v.

PCJV USA, LLC, a Delaware limited  
liability company; PCI TRADING,  
LLC, a Delaware limited liability  
company; GUY KOREN, an individual;  
POTATO CORNER LA GROUP, LLC,  
a California limited liability company;  
NKM CAPITAL GROUP, LLC, a  
California limited liability company;  
J & K AMERICANA, LLC, a California  
limited liability company; J&K  
LAKEWOOD, LLC, a California  
limited liability company; J&K  
VALLEY FAIR, LLC, a California  
limited liability company; J & K  
ONTARIO, LLC, a California limited  
liability company; HLK MILPITAS,  
LLC, a California, limited liability  
company; GK CERRITOS, LLC, a  
California, limited liability company;  
J&K PC TRUCKS, LLC, a California

Case No. 2:24-CV-04546-SB(AGRx)

*The Hon. Stanley Blumenfeld, Jr.*

**JOINTLY FILED CLAIMS,  
COUNTERCLAIMS, THIRD  
PARTY CLAIMS, AND  
AFFIRMATIVE DEFENSES TO  
BE TRIED**

Complaint Filed: May 31, 2024

Trial Date: August 18, 2025

limited liability company; and, GK CAPITAL GROUP, LLC, a California limited liability company and DOES 1 through 100, inclusive,

Defendants.

PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a Delaware limited liability company; POTATO CORNER LA GROUP LLC, a California limited liability company; GK CAPITAL GROUP, LLC, a California limited liability company; NKM CAPITAL GROUP LLC, a California limited liability company; and GUY KOREN, an individual,

Counter-Claimants,

v.

SHAKEY'S PIZZA ASIA VENTURES, INC, a Philippines corporation,

Counter Defendant.

PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a Delaware limited liability company; POTATO CORNER LA GROUP LLC, a California limited liability company; GK CAPITAL GROUP, LLC, a California limited liability company; NKM CAPITAL GROUP LLC, a California limited liability company; and GUY KOREN, an individual,

Third Party Plaintiffs,

v.

PC INTERNATIONAL PTE LTD., a Singapore business entity; SPAVI INTERNATIONAL USA, INC., a California corporation; CINCO CORPORATION, a Philippines corporation; and DOES 1 through 10, inclusive,

Third Party Defendants.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **TABLE OF CONTENTS**

### **Page**

I.	Plaintiff Shakey’s Pizza Asia Venture’s Inc. (“SPAVI” or “Plaintiff): Claims to be Tried by a Jury.....	4
1)	Claim 1: Trademark Infringement Against All Entity Defendants .....	4
2)	Claim 3: False Designation of Origin and Description of Fact Against All Entity Defendants (15 U.S.C. § 1125):.....	20
3)	Claim 4: Contributory Trademark Infringement Against All Defendants (Against Guy Koren, PCJV USA, LL, PCI Trading, LLC, Potato Corner LA Group, LLC; GK Capital, LLC or NKM Capital Group, LLC).....	32
4)	Claim 5: Contributory False Designation of Origin Against Guy Koren, PCJV USA, LL, PCI Trading, LLC, Potato Corner LA Group, LLC; GK Capital, LLC or NKM Capital Group, LLC.....	36

Pursuant to Dkt. No. 254, the parties submit the following causes of action, counterclaims, third party claims, and affirmative defenses as at issue for trial. SPAVI further notes that two of its entries in this document are longer than one paragraph. With respect to those notes, given their rarity herein, and given the number of pleadings disputing those elements themselves, the disagreements about what can or cannot be presented therein have been extensive and cannot easily be consolidated into one paragraph while communicating the same layered issues. SPAVI apologizes to this Court and assures this Court it was not meant as a sign of disrespect, but, rather a sign of the importance of those elements at issue.

**I. PLAINTIFF SHAKEY'S PIZZA ASIA VENTURE'S INC. ("SPAVI" OR "PLAINTIFF): CLAIMS TO BE TRIED BY A JURY.**

**1) Claim 1: Trademark Infringement Against All Entity Defendants**

(15 U.S.C. § 1114), regarding the three registered marks at issue: (1) U.S. Reg. No. 5900257: the word mark "Potato Corner" ("Word Mark"); (2) U.S. Reg. No. 6088456 protecting "World's Best Flavored French Fries (the "Slogan Mark"); and (3) U.S. Reg. No. 3760041 (the "Logo Mark") protecting:



a. Element No. 1: the Word Mark, Slogan Mark, and/or the Logo Mark (all collectively, the "Marks") are valid and protectible trademarks:

1. This element is not disputed

b. Element No. 2: Plaintiff owns the Word Mark, Slogan Mark, and/or the Logo Mark

1. This element is disputed.

2. Nature of Dispute: Legal and Factual

3. Plaintiff's Legal Position: Defendants do not dispute that the registrations for all three Marks (Trial Exhibit Nos. 1, 3, and 5) identify Cinco as the registrant and the first to use each of the three Marks, nor do Defendants dispute that the

1 Deeds of Assignment attached to the notices filed with the  
2 USPTO (Trial Exhibit Nos. 4 and 6) confirm that,  
3 unequivocally and without exception, the entirety of these  
4 Marks were sold and assigned to Plaintiff, along with all  
5 the goodwill arising out of or associated with the Marks.  
6 Defendants also do not dispute the testimony of Seller  
7 (Cinco) and Buyer (SPAVI) that the Deeds are accurate in  
8 every way, that the sale and assignments were  
9 comprehensive, without carve outs, and fully  
10 consummated. Instead, Defendants take internally  
11 inconsistent positions that are contradicted by various legal  
12 doctrine, including: **(1) Licensee Estoppel**, wherein PCJV  
13 (as well as all other Defendants that operate or own a  
14 business using the Marks), as a licensee of Cinco (and  
15 subsequently SPAVI) through the implied license or even  
16 the unsigned Master License Agreement claimed by  
17 Defendants to be binding “may not set up any adverse  
18 claim in it as against its licensor.” *Pac. Supply Co-op. v.*  
19 *Farmers Union Cent. Exch. Inc.*, 318 F.2d 894, 908 (9th  
20 Cir. 1963). **(2) The Lanham Act provisions rendering**  
21 **Defendants’ positions contrary to federal law**, in that  
22 Defendants’ attempts to claim that the first time they used  
23 the Marks should be credited to them, even though they  
24 were acting as licensees of PCJV or Defendants’ claim of  
25 ownership of the goodwill created through PCJV’s stores  
26 (operated as licensees) inured to Defendants’ benefit  
27 contradicts 15 USC § 1055 (as well as the unsigned Master  
28 License Agreement they claimed to be adhering to this

1 whole time). **(3) Law of the case**, in that Defendants’  
2 challenge to Plaintiff’s ownership of the Marks based on  
3 Defendants’ first use as licensee of Cinco has already been  
4 resolved by this Court and the Ninth Circuit, which held  
5 that “it is undisputed that Cinco registered the three marks  
6 at issue then transferred ownership of those marks to  
7 SPAVI.” The Ninth Circuit then explicitly rejected PCJV’s  
8 theories that it was the first to use the marks domestically  
9 by holding that “in the licensor-licensee context, a  
10 licensee’s use of a trademark inures to the benefit of the  
11 licensor-registrant” (*Shakeys Pizza Asia Ventures, Inc. v.*  
12 *PCJV USA, LLC*, No. 24-7084, 2025 WL 1431270, at \*1  
13 (9th Cir. May 19, 2025)), thus rendering, for example, any  
14 allegation by PCJV of its use as a licensee as being proof  
15 of its first use cannot serve as a basis to challenge SPAVI’s  
16 ownership because this theory has been considered and  
17 rejected by the Ninth Circuit in this case, as has also the  
18 various other legal theories of Defendants offered during  
19 the injunction stage that are based on the same facts  
20 asserted during the injunction and rejected by this Court.  
21 Even at the injunction stage, rulings by this Court and the  
22 Ninth Circuit “on pure issues of law, however, are  
23 binding.” *Ranchers Cattlemen Action Legal Fund United*  
24 *Stockgrowers of Am. v. U.S. Dep’t of Agr.*, 499 F.3d 1108,  
25 1114 (9th Cir. 2007); *see, e.g. Arizona v. California*, 460  
26 U.S. 605, 618 (1983) (citing the rule as being “when a court  
27 decides upon a rule of law, that decision should continue to  
28 govern the same issues in subsequent stages in the same

1 case”). **(4) Authorities cited by Defendants do not**  
2 **support their position, including *Sengoku***, which  
3 presented a distinguishable case – a foreign manufacturer  
4 that was the first to use versus the domestic distributor that  
5 was the registrant, whereas in this case the foreign licensor  
6 is both the first to use and the registrant – and yet,  
7 Defendants continue to cite it as supporting their claim of  
8 ownership or rights, and it does not. **(5) The merger**  
9 **doctrine**, wherein the purchase and sale agreement  
10 between Cinco and SPAVI selling and agreeing to assign  
11 to SPAVI the Potato Corner marks and brand merge into  
12 the undisputed and unequivocal deeds that are notarized  
13 and ratified by Buyer and Seller (Trial Exhibit Nos. 4 and  
14 6) such that these Deeds would control if there was any  
15 inconsistency between the purchase and sale agreement  
16 and the deed (there is not, as those agreements said nothing  
17 about and acknowledged no rights held by any of the  
18 Defendants), such that Defendants’ speculative theory that  
19 the purchase and sale agreement between Cinco and  
20 SPAVI reserved some rights for Defendants cannot even  
21 be presented to the jury given that the Deeds do not reserve  
22 anything for Defendants – a doctrine that applies in federal  
23 intellectual property cases and renders any questions as to  
24 what the deal between SPAVI and Cinco actually said,  
25 irrelevant. *See, e.g., Palos Verdes Corp. v. Hous. Auth. of*  
26 *Los Angeles Cnty.*, 202 Cal. App. 2d 827, 836 (1962)  
27 (explaining that “if the language of a deed is plain, certain,  
28 and unambiguous, neither parol evidence nor surrounding

1 facts and circumstances will be considered to add to,  
2 detract from, or vary its terms or to determine the estate  
3 conveyed); *B. F. Goodrich Co. v. A. T. I. Caribe, Inc.*, 366  
4 F. Supp. 464,467 (D. Del. 1973) (applying this concept in  
5 the intellectual property context). **(6) Standing**, in that  
6 none of the Defendants were party to the transaction  
7 between Cinco and Plaintiff, and as such, have no standing  
8 to question whether the Deeds (notarized and ratified)  
9 represent the actual deal between Cinco and SPAVI or  
10 some other imagined reservation of their rights supposedly  
11 contained in the purchase and sale agreement that did not  
12 make it into the Deeds (a fantasy that did not happen). *See,*  
13 *e.g. Imperial Residential Design, Inc. v. Palms Dev. Grp.,*  
14 *Inc.*, 70 F.3d 96, 99 (11th Cir. 1995) (agreeing that "that,  
15 where there is no dispute between the copyright owner and  
16 the transferee about the status of the copyright, it would be  
17 unusual and unwarranted to permit a third-party infringer  
18 to invoke [the requirement of a writing memorializing the  
19 status] to avoid suit for copyright infringement."). **(7)**  
20 **Judicial estoppel**, in his sworn allegations in the Prior  
21 Governance Action (*Cinco Corporation et. al. v. Guy*  
22 *Koren et. al.* Los Angeles Superior Court Case No.  
23 BC701075), Koren admitted repeatedly including in  
24 verified allegations that Cinco "owned the Potato Corner  
25 brand" (Trial Exhibit No. 1421, ¶ 26), an allegation that  
26 Cinco **admitted** (Trial Exhibit, No. 1422, ¶ 26.), such that  
27 PCJV and Koren must be barred from making a "factual  
28 assertion" that Cinco did not own the brand "which



1 directly contradicts an earlier assertion made in the same  
2 proceeding or a prior one.” *United States v. Lence*, 466  
3 F.3d 721, 726 (9th Cir. 2006) (citing and quoting *Russell v.*  
4 *Rolfs*, 893 F.2d 1033, 1037 (9th Cir.1990)).

5 4. Defendants’ Position Statement: The ownership issues  
6 framed by the Proposed Final Pretrial Conference Order  
7 (Dkt. No. 244), the Memoranda of Contentions of Law and  
8 Fact (Dkt. Nos. 197 and 199) and pleadings are: (1) senior  
9 use under *Sengoku*, including actual first use (restructure in  
10 2009) and lawful first use, *see CreAgri, Inc. v. USANA*  
11 *Health Services, Inc.*, 474 F3d 626, 630 (9th Cir. 2007); (2)  
12 continuous use under 15 U.S.C § 1055; (3) assignment in  
13 gross; (4) acquisition of “attached” rights by the PCJV  
14 USA Parties and Plaintiff’s corresponding denial of  
15 acquiring burdens attached to the trademarks; (5) naked  
16 license; and (6) priority favoring Defendants based on  
17 other defenses. Plaintiff’s proffered statement is non-  
18 responsive. It is a combative, inappropriate and false  
19 narrative of Defendants’ position, record evidence,  
20 preliminary rulings and the ownership issues for trial as set  
21 forth in the Proposed Final Pretrial Conference Order (Dkt.  
22 No. 244), Memorandums of Contentions of Law and Fact  
23 (Dkt. Nos. 197 and 199) and pleadings. “The court’s  
24 preliminary injunction did not make final factual  
25 determinations; no party moved for summary judgment;  
26 and the jury needs to be instructed on the claims asserted  
27 in this case.” Dkt. No. 254 at 2. Plaintiff’s unpled defenses  
28 of infringer standing, licensee estoppel, judicial estoppel,

1 and merger (parol evidence) doctrine are not issues for trial  
2 per the Proposed Final Pretrial Conference Order (Dkt. No.  
3 244) or Plaintiff's Memorandum of Contentions of Law  
4 and Fact (Dkt. No. 199). Plaintiff's asserted "legal  
5 positions," which seek to avoid a trial on the merits, are  
6 also based on inapplicable authority (or no authority at all)  
7 and misstate the record. For these reasons, including  
8 because Plaintiff's "legal positions" go beyond identifying  
9 the actual ownership issues set for trial, Defendants will  
10 address them if or when they arise after the evidence on  
11 ownership is presented at trial

12 5. Plaintiff's Supporting Evidence: Notarized Deeds signed  
13 by seller and buyer; USPTO filings including Registrations  
14 and Assignments, testimony of Gregorio (Plaintiff's CEO),  
15 Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's  
16 General Counsel), FDDs, Franchise Agreements.

17 6. Defendants' Supporting Evidence: documents and  
18 testimony including and related to (1) Defendants' senior  
19 use and quality control of Potato Corner in the United  
20 States; (2) the superseding partnership agreement; (3) DLA  
21 Piper's notification of Cinco Corporation's unlawful use of  
22 Potato Corner in the United States; (4) the State of  
23 California's Department of Business Oversight's Order  
24 sanctioning PCJV USA, LLC for Cinco Corporation's  
25 alleged prior use of Potato Corner in the United States; (5)  
26 the superseding and restructure agreement confirmed by  
27 Guy Koren and Jose Magsaysay vesting ownership of  
28 Potato Corner in their partnership; (6) the joint venture

1 agreement vesting co-ownership of Potato Corner in the  
2 United States in PCJV USA, LLC; (7) control over Potato  
3 Corner in the United States being vested with and exercised  
4 by PCJV USA, LLC; (8) Potato Corner USA being affixed  
5 to Potato Corner in the United States; (9) consumer  
6 association of Potato Corner in the United States with  
7 PCJV USA, LLC, to whom complaints, if any, were  
8 lodged; (10) PCJV USA, LLC's creation, development and  
9 hold over the goodwill of Potato Corner in the United  
10 States for over a decade; (11) absent a license agreement,  
11 which SPAVI Parties disavow, PCJV USA, LLC's use  
12 inured to its own benefit; (12) Cinco Corporation's lack of  
13 control of Potato Corner in the United States for over a  
14 decade; (13) Defendants' objection to Plaintiff's alleged  
15 acquisition of U.S. trademark rights in breach of Cinco  
16 Corporation's fiduciary duties and PCJV USA, LLC's joint  
17 venture agreement ("JVA") and First Amendment thereto  
18 ("First Amendment") given that Plaintiff was disavowing  
19 the existence of a license agreement; (14) Cinco  
20 Corporation assigned U.S. Potato Corner trademarks to  
21 Plaintiff without the goodwill associated with the  
22 trademarks; (15) Plaintiff's lack of control of Potato Corner  
23 in the United States after it allegedly acquired the U.S.  
24 trademarks; (16) Defendants' Membership Interest  
25 Purchase Agreement ("MIPA") with Cinco acquiring all of  
26 its Interests in PCJV USA, LLC and all rights "attached"  
27 thereto unencumbered by a need for a license from any  
28 third party; (17) Plaintiff's denial of stepping into Cinco

1 Corporation's shoes and acquiring the licensing burdens  
2 attached to the U.S. trademarks; and (18) Plaintiff's  
3 suppression of ownership evidence.

4 c. Element No. 3: Defendants used the Word Mark, Slogan Mark,  
5 and/or the Logo Mark in interstate commerce after May 31, 2024:

6 1. This element is undisputed.

7 d. Element No. 4: Defendants' use of the Word Mark, Slogan Mark,  
8 and/or the Logo Mark in interstate commerce after May 31, 2024,  
9 was without the consent of Plaintiff and in a manner likely to  
10 cause confusion among ordinary consumers as to the source,  
11 sponsorship, affiliation, or approval of the services.

12 1. This element is disputed.

13 2. Nature of Dispute: Legal and Factual

14 3. Plaintiff's Legal Position: As for absence of consent, given  
15 the absence of any ownership rights, Defendants must  
16 locate some right as a licensee of the owner (SPAVI).  
17 Defendants offer two documents proffered as agreements  
18 that bind Cinco to a perpetual license. Neither work as a  
19 matter of law. First, they offer the unsigned October 10,  
20 2010, document containing terms for a Master License  
21 Agreement (Trial Exhibit No. 11), which this Court (and  
22 the Ninth Circuit) have reviewed. Both have interpreted it  
23 as a matter of law, concluding that it is an unsigned draft  
24 (as Koren's testimony has confirmed) and illusory because  
25 the licensor is given no consideration for this purported  
26 agreement. The unsigned document cannot, as a matter of  
27 law, have bound Cinco, even through implied contract law,  
28 because Cinco did not do anything in furtherance of that

document to imply its assent. Moreover, multiple times after October 10, 2010, documents were signed stating that Cinco would be expecting a 30% royalty recovery. Second, Plaintiffs point to § 3(g) of an Amended Joint Venture Agreement (and its predecessor the Joint Venture Agreement) – Trial Exhibit Nos. 8 and 9 – which this Court has already interpreted to constitute an agreement to agree, in the future, with Cinco on a license agreement. As the Ninth Circuit said in affirming this conclusion, “the AJVA contained an agreement to enter a *future* Master License Agreement, not a “perpetual license” like PCJV claims.” *Shakeys Pizza Asia Ventures, Inc. v. PCJV USA, LLC*, No. 24-7084, 2025 WL 1431270, at \*1 (9th Cir. May 19, 2025) (citing *First Nat'l Mortg. Co. v. Fed. Realty Inv. Tr.*, 631 F.3d 1058, 1065 (9th Cir. 2011) (“[A]n ‘agreement to agree,’ without more, is not a binding contract.”). This interpretation of the AJVA and JVA is a legal conclusion, which, as affirmed by the Ninth Circuit are legal conclusions, and, as such, these are pure conclusions of law, which means: **this Court’s conclusion that § 3(g) of the JVA and AJVA are agreements to agree and do not bind Cinco to a “perpetual license” are law of the case and cannot be disturbed or challenged at trial.** This theory based on interpretation of a contract has been considered and rejected by this Court and the Ninth Circuit in this case, and because it is a “pure issue[] of law, however, [it is] binding” on Defendants under law of the case. *Ranchers Cattlemen Action Legal Fund United*

1 *Stockgrowers of Am. v. U.S. Dep't of Agr.*, 499 F.3d 1108,  
2 1114 (9th Cir. 2007); *see, e.g. Arizona v. California*, 460  
3 U.S. 605, 618 (1983) ((citing the rule as being “when a  
4 court decides upon a rule of law, that decision should  
5 continue to govern the same issues in subsequent stages in  
6 the same case”). Defendants now trot out other theories  
7 such the fact that the JVA and prior Operating Agreement  
8 are still somewhat live under a theory of partial integration,  
9 however, the following point prevails over each of these  
10 contortions: Defendants can point to no agreement or  
11 document, or acct, or statement, binding Cinco to a  
12 perpetual, irrevocable, royalty free licensee of its Marks.  
13 As such, in the absence of any written agreement, or  
14 documentation of any license terms, the sole license that  
15 existed as of May 31, 2024, was implied and terminable at  
16 will *See Pogrebnoy v. Russian Newspaper Distribution,*  
17 *Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*,  
18 742 F. App'x 291 (9th Cir. 2018) (“[A]n implied license,  
19 like any other contract, is terminable at the will of either  
20 party if it is not for a specified term.”). One final flaw exists  
21 in the attempt to bind Cinco to the AJVA, and that is one  
22 of issue preclusion in favor of Plaintiffs. As evidenced by  
23 Plaintiff's own Third Amended Complaint (verified) in the  
24 Prior Governance Action, the entire pleading is based on  
25 the theory that -- and it sought judgment concluding that -  
26 - Cinco is an alter ego of the entity that was a 60% member  
27 of PCJV. (*See* Trial Exhibit No. 1421 p. 7:3-14.) Such  
28 allegations, having been dismissed, with prejudice, by

1 Koren, re4nder thee accusations extinguished, and, as such,  
2 Defendants are precluded from alleging them ever again.

3 Regarding likelihood of confusion, which may be  
4 resumed, and the jury may be so instructed “[w]here,’ as  
5 here, “a licensee persists in the unauthorized use of a  
6 licensor’s trademark, courts have found that the continued  
7 use alone establishes a likelihood of consumer  
8 confusion.” *Robert Trent Jones II, Inc. v. GFSI, Inc.*, 537  
9 F. Supp. 2d 1061, 1065 (N.D. Cal. 2008) (citing and  
10 quoting *Sun Microsystems v. Microsoft Corp.*, 999  
11 F.Supp. 1301, 1311 (N.D.Cal.1998) (citing *Paisa, Inc. v.*  
12 *N & G Auto, Inc.*, 928 F.Supp. 1009, 1012 n. 4  
13 (C.D.Cal.1996); *Hollywood Athletic Club*, 938 F.Supp. at  
14 614–15 (C.D.Cal.1996)). The Sixth Circuit’s analysis in  
15 *Max Rack, Inc. v. Core Health & Fitness, LLC*, 40 F.4th  
16 454, 464 (6th Cir. 2022) is instructive:

17  
18 “A separate body of law has developed for this  
19 distinct claim that a holdover licensee has  
20 continued to use a licensor’s mark after their  
21 agreement expired. *See* 4 McCarthy, *supra*, §  
22 25:31 (citing cases). In this context, courts have  
23 jettisoned the usual totality-of-the-  
24 circumstances test in favor of a more  
25 categorical rule: “proof of continued,  
26 unauthorized use of an original trademark by  
27 one whose license to use the trademark had  
28 been terminated is sufficient to establish  
‘likelihood of confusion.’ ” *U.S. Structures, Inc.*  
*v. J.P. Structures, Inc.*, 130 F.3d 1185, 1190  
(6th Cir. 1997); *ITT Indus., Inc. v. Wastecorp.*  
*Inc.*, 87 F. App’x 287, 293 (3d Cir. 2004);  
*Gorenstein Enters., Inc. v. Quality Care-USA*,



1 *Inc.*, 874 F.2d 431, 435 (7th Cir. 1989); *Burger*  
2 *King Corp. v. Mason*, 710 F.2d 1480, 1492–93  
3 (11th Cir. 1983); *Pro. Golfers Ass'n of Am. v.*  
4 *Bankers Life & Cas. Co.*, 514 F.2d 665, 670 (5th  
5 Cir. 1975); *L & L Wings, Inc. v. Marco-Destin,*  
6 *Inc.*, 676 F. Supp. 2d 179, 188 (S.D.N.Y. 2009).  
7 This rule makes good sense when a holdover  
8 licensee blatantly infringes the licensor's mark  
9 by using that mark in the same way as it did  
10 before the agreement expired. Without any need  
11 to tick through factors, it should be obvious that  
12 consumers will believe, for example, that a  
13 pizza restaurant remains affiliated with the  
14 “Little Caesars” chain when a terminated  
15 franchisee continues to operate the pizzeria as a  
16 Little Caesars. *See Little Caesar Enters., Inc. v.*  
17 *Miramar Quick Serv. Rest. Corp.*, 2020 WL  
18 4516289, at \*3 (6th Cir. 2020) (order)”

14 Although Plaintiff intends to, and will, adduce proof of the  
15 *Sleekcraft* factors, the presumption exists, and it is entitled to  
16 stand on this presumption alone. *See also, Brookfield Commc'ns,*  
17 *Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1056 (9th Cir. 1999)  
18 (“In light of the virtual identity of marks, if they were used with  
19 identical products or services likelihood of confusion would  
20 follow as a matter of course”); *Park 'n Fly, Inc. v. Dollar Park*  
21 *& Fly, Inc.*, 782 F.2d 1508, 1509 (9th Cir. 1986) (holding that  
22 when marks and services are identical and channels are the  
23 same, likelihood of confusion is assumed, even if the other  
24 factors weight against); *see also Blue Mako Inc. v. Minidis*, No.  
25 CV 07-916 AHM (SHX), 2008 WL 11334205 (C.D. Cal. June  
26 23, 2008) (applying these principles to similar facts). Although  
27 Plaintiff intends to, and will, adduce proof of the *Sleekcraft*  
28 factors, the presumption exists, and it is entitled to stand on this



1 presumption alone.

2 4. Defendants' Position Statement: If Defendants are not  
3 found to have a superior claim to ownership, authorization  
4 issues framed by the Proposed Final Pretrial Conference  
5 Order (Dkt. No. 244), the Memoranda of Contentions of  
6 Law and Fact (Dkt. Nos. 197 and 199) and pleadings are  
7 whether, based on a partnership meeting of the minds,  
8 governing documents, course of performance, fiduciary  
9 and contractual obligations, the implied covenant of good  
10 faith and fair dealing, and reasonable and detrimental  
11 reliance: (1) PCJV USA, LLC had a "lifetime" license as a  
12 joint venture partner; (2) PCJV USA, LLC had a 20-year  
13 license with three 10-year options; (3) PCJV USA, LLC  
14 had a non-terminable-at-will license; (4) Plaintiff owed  
15 fiduciary or contractual obligations to provide PCJV USA,  
16 LLC a long-term license consistent with the PCJV USA  
17 Parties being joint venture partners, see J. Thomas  
18 McCarthy, *McCarthy on Trademarks and Unfair*  
19 *Competition*, § 18:15, at (5th ed.) ("It is elementary  
20 ancient law that an assignee never stands in any better  
21 position than his assignor") (citation omitted); and (5)  
22 other defenses to enforcement, including promissory  
23 estoppel, authorizing PCJV USA, LLC's continued use of  
24 the U.S. trademarks. Plaintiff's proffered statement is non-  
25 responsive. It is a combative, inappropriate and false  
26 narrative of record evidence, preliminary rulings and the  
27 authorization issues for trial as set forth in the Proposed  
28 Final Pretrial Conference Order (Dkt. No. 244),

Memoranda of Contentions of Law and Fact (Dkt. Nos. 197 and 199) and pleadings. “The court’s preliminary injunction did not make final factual determinations; no party moved for summary judgment; and the jury needs to be instructed on the claims asserted in this case.” Dkt. No. 254 at 2. Plaintiff’s asserted “legal positions,” which seek to avoid a trial on the merits, are also based on inapplicable authority (or no authority at all) and misstate the record. For these reasons, including because Plaintiff’s “legal positions” go beyond identifying the actual authorization issues set for trial, Defendants will address them if or when they arise after the evidence on PCJV USA LLC’s authorization to continue using the U.S. trademarks is presented at trial.

5. Plaintiff’s Supporting Evidence: Trial Exhibit 29 (May 31, 2024 Termination); photographs of various stores taken from May 31, 2025 through the present; Testimony of Koren; Plaintiff executives Gregorio (Plaintiff’s CEO), Concepcion (Plaintiff’s COO charged with US operations), Tan (Director responsible for international franchising); investigator; Franchisees; Kim Lambert and Barry Kurtz; in addition to the following documents Amended Joint Venture Agreement and Joint Venture Agreement.

6. Defendants’ Supporting Evidence: documents and testimony including and related to (1) Defendants’ senior use and quality control of Potato Corner in the United States; (2) the superseding and restructure agreement confirmed by Guy Koren and Jose Magsaysay vesting

1 partnership rights to build, develop and control Potato  
2 Corner in the United States; (3) the joint venture agreement  
3 vesting lifetime partnership rights to build, develop and  
4 control Potato Corner in the United States; (4) absent a  
5 license agreement, which SPAVI Parties disavow, PCJV  
6 USA, LLC's owns the U.S. Potato Corner marks as its use  
7 inured to its own benefit; (5) all the terms and conditions  
8 of the JVA and First Amendment thereto controlling  
9 licensing, approval of franchisee agreements, including as  
10 disclosed in franchise disclosure documents ("FDDs"), and  
11 management and operations of Potato Corner in the United  
12 States; (6) parol evidence regarding the partners' meeting  
13 of the minds; (7) the JVA's related agreements, which  
14 remained operative and under which Cinco Corporation  
15 remained a fiduciary and party to the JVA after the First  
16 Amendment as confirmed a plethora of documentary  
17 evidence; (8) the license agreements setting forth the terms  
18 and conditions upon which PCJV USA, LLC's senior use  
19 and control of Potato Corner in the United States would  
20 inure to the benefit of Cinco Corporation, which the SPAVI  
21 Parties now disavow, even though Cinco Corporation  
22 offered it through DLA Piper, or thereafter accepted,  
23 countersigned or otherwise entered into the license  
24 agreements as evidenced in many writings and agreed and  
25 approved of in FDDs; (9) course of performance for more  
26 than a decade as evidenced by approved FDDs, which  
27 ratified the license agreements and confirmed an entered  
28 into license agreement; (10) reasonable and detrimental

1 reliance; (11) fiduciary obligations, the implied covenant  
2 of good faith and fair dealing, and the JVA and First  
3 Amendment's plain acknowledgement that there are no  
4 terminable-at-will branding rights; (12) Plaintiff's denial of  
5 stepping into Cinco Corporation's shoes and acquiring the  
6 licensing burdens attached to the U.S. trademarks; and (13)  
7 Plaintiff's suppression of authorization evidence

8 e. Element No. 5: Damage caused by infringement designation.

9 1. This element is disputed.

10 2. Nature of Dispute: factual

11 3. Plaintiff's Supporting Evidence: Defendants have  
12 produced financials for the period in question May 31,  
13 2024 through the present, and, given that the entirety of  
14 their business is built of the confusion, we only need to  
15 prove profits which can be disgorged. Thus, the financials  
16 as well as Koren testimony and testimony of franchisees as  
17 well as correspondence regarding costs of goods sold as  
18 well as the testimony of the CFO of Shakey's will establish  
19 damage. No expert is needed for arithmetic. To the  
20 contrary, it is Defendant who bears a heavier burden of  
21 establishing what costs or expenses "actually contributed  
22 to the sale of the infringing products." *Monster Energy Co.*  
23 *v. Integrated Supply Network, LLC*, 533 F. Supp. 3d 928,  
24 938 (C.D. Cal. 2021)

25 4. Defendants' Supporting Evidence:

26 **2) Claim 3: False Designation of Origin and Description of Fact**  
27 **Against All Entity Defendants (15 U.S.C. § 1125):**  
28

1 a. Element No. 1: The Defendants used a designation, such as a  
2 word, term, name, device, or a combination thereof, or a false  
3 designation of origin:

4 1. This element is disputed.

5 2. Nature of Dispute: Legal and Factual

6 3. Plaintiff's Position Statement: This is essentially the  
7 federal version of our § 17200 claim in that, when looked  
8 at in its entirety, fits squarely within what was intended by  
9 15 USDCD 1125(a)(1)(A). By continuing to operate using  
10 the same federal trademarks, menu layouts, and color  
11 schemes, and promotes its new brand as having the 'same  
12 taste' after having reverse engineered the flavorings and  
13 then used that, plus the menu that is unchanged – same  
14 colors, fonts, pictures, layout, even same product names –  
15 and all of this is likely to cause consumer confusion  
16 regarding the source or origin of the goods or services, as  
17 customers may believe the new business is still affiliated  
18 with or originates from the original brand. *See generally*  
19 *Blue Mako Inc. v. Minidis*, No. CV 07-916 AHM (SHX),  
20 2008 WL 11334205 (C.D. Cal. June 23, 2008) (applying  
21 these principles to similar facts).

22 4. Defendants' Position Statement: The legal issues set for  
23 trial in the Proposed Final Pretrial Conference Order (Dkt.  
24 No. 244), Memoranda of Contentions of Law and Fact  
25 (Dkt. Nos. 197 and 199) and pleadings regard ownership  
26 of and authorization to use the U.S. Potato Corner  
27 trademarks; there is no “trade dress” issue in the pleadings  
28 set for trial. Moreover, “same as” comparative advertising

1 of taste or fragrance is not unfair competition. *Smith v.*  
2 *Chanel, Inc.*, 402 F.2d 562, 563 (9th Cir. 1968). Further,  
3 proffered “former location” confusion is not actionable in  
4 California (*see* Bus. & Prof. Code § 16600) nor proves or  
5 is probative of ordinary consumer confusion that is the  
6 subject of the Lanham Act after the market settles from a  
7 partnership divorce, especially after Plaintiff is the one  
8 who changed the *status quo* and caused any confusion

9 5. Plaintiff’s Supporting Evidence: Photographs and  
10 testimony from former franchisees, the COO of SPAVI,  
11 Mr. Concepcion, as well as the testimony of Koren, and the  
12 Franchise Agreements, FDDs, and leases, of PCJV over the  
13 years.

14 6. Defendants’ Supporting Evidence: documents and  
15 testimony including and related to (1) Defendants’  
16 ownership of the U.S. Potato Corner trademarks, which  
17 merely are a symbol of PCJV USA, LLC’s business and  
18 restaurant and catering services; (2) Defendants’  
19 authorization to use the U.S. Potato Corner trademarks; (3)  
20 no consumer survey evidence; (4) no evidence of  
21 actionable ordinary consumer confusion but just  
22 speculation about market conditions after the market  
23 stabilizes, let alone actionable confusion attributable to  
24 alleged unfair competition framed by the Proposed Final  
25 Pretrial Conference Order (Dkt. No. 244), Memoranda of  
26 Contentions of Law and Fact (Dkt. Nos. 197 and 199) and  
27 pleadings; (5) no marketplace confusion before Plaintiff  
28 brought this action; (6) any marketplace confusion would

stem from Plaintiff's efforts to create it rather than Plaintiff just filing an action for declaratory relief to resolve ownership and authorization issues after it acquired contested assets in the middle of franchise litigation between joint venture partners; and (7) Plaintiff's suppression of evidence, including Plaintiff's communications with U.S. franchisees under contract with PCJV USA, LLC that were timely requested and ordered be produced.

b. Element No. 2: The use was in interstate commerce.

i. This element is not disputed

c. Element No. 3: The use was in connection with goods or services.

1. This element is disputed.

2. Nature of Dispute: Legal and Factual

3. Plaintiff's Position Statement: Defendants' purported objection is one of fact no law. The registrations are for services, and the use of the marks was for services. If Defendants were using the Marks for some other purpose, they have more liability than previously known.

4. Defendants' Position Statement: The registered first use of the registered marks are for restaurant and catering services; the registered marks are merely a symbol of Potato Corner in the United States, which distributed goods and services; the case is not a "goods" case, including because the registrations predate any alleged unfair competition.

5. Plaintiff's Supporting Evidence: USPTO filings including Registrations and Assignments.

6. Defendants’ Supporting Evidence: documents and testimony including and related to (1) U.S. Reg. No. 5900257: the word mark “Potato Corner”; (2) U.S. Reg. No. 6088456: “World’s Best Flavored French Fries; and (3) U.S. Reg. No. 3760041: the Logo Mark.

d. Element No. 4: Defendants’ designation or false designation is likely to cause confusion, mistake, or deception regarding either the affiliation, connection, or association of the defendant with another person, or the origin, sponsorship, or approval of the defendant's goods, services, or commercial activities by another person.

1. This element is disputed in part.

2. Nature of Dispute: Legal and Factual

3. Plaintiff’s Legal Position: The ultimate test” for unfair competition is exactly the same as for trademark infringement: “whether the public is likely to be deceived or confused.” *Century 21 Real Est. Corp. v. Sandlin*, 846 F.2d 1175, 1178 (9th Cir. 1988) Regarding likelihood of confusion, which may be presumed, and the jury may be so instructed “[w]here,” as here, “a licensee persists in the unauthorized use of a licensor's trademark, courts have found that the continued use alone establishes a likelihood of consumer confusion.” *Robert Trent Jones II, Inc. v. GFSI, Inc.*, 537 F. Supp. 2d 1061, 1065 (N.D. Cal. 2008) (citing and quoting *Sun Microsystems v. Microsoft Corp.*, 999 F.Supp. 1301, 1311 (N.D.Cal.1998) (citing *Paisa, Inc. v. N & G Auto, Inc.*, 928 F.Supp. 1009, 1012 n. 4 (C.D.Cal.1996); *Hollywood Athletic Club*, 938 F.Supp. at



1 614–15 (C.D.Cal.1996)). The Sixth Circuit’s analysis in  
2 Max Rack, Inc. v. Core Health & Fitness, LLC, 40 F.4th  
3 454, 464 (6th Cir. 2022) is instructive:

4 “A separate body of law has developed for this  
5 distinct claim that a holdover licensee has  
6 continued to use a licensor's mark after their  
7 agreement expired. *See* 4 McCarthy, *supra*, §  
8 25:31 (citing cases). In this context, courts have  
9 jettisoned the usual totality-of-the-  
10 circumstances test in favor of a more categorical  
11 rule: “proof of continued, unauthorized use of an  
12 original trademark by one whose license to use  
13 the trademark had been terminated is sufficient  
14 to establish ‘likelihood of confusion.’ ” *U.S.*  
15 *Structures, Inc. v. J.P. Structures, Inc.*, 130 F.3d  
16 1185, 1190 (6th Cir. 1997); *ITT Indus., Inc. v.*  
17 *Wastecorp. Inc.*, 87 F. App'x 287, 293 (3d Cir.  
18 2004); *Gorenstein Enters., Inc. v. Quality Care-*  
19 *USA, Inc.*, 874 F.2d 431, 435 (7th Cir. 1989);  
20 *Burger King Corp. v. Mason*, 710 F.2d 1480,  
21 1492–93 (11th Cir. 1983); *Pro. Golfers Ass'n of*  
22 *Am. v. Bankers Life & Cas. Co.*, 514 F.2d 665,  
23 670 (5th Cir. 1975); *L & L Wings, Inc. v. Marco-*  
24 *Destin, Inc.*, 676 F. Supp. 2d 179, 188 (S.D.N.Y.  
25 2009). This rule makes good sense when a  
26 holdover licensee blatantly infringes the  
27 licensor's mark by using that mark in the same  
28 way as it did before the agreement expired.  
Without any need to tick through factors, it  
should be obvious that consumers will believe,  
for example, that a pizza restaurant remains  
affiliated with the “Little Caesars” chain when a  
terminated franchisee continues to operate the  
pizzeria as a Little Caesars. *See Little Caesar*  
*Enters., Inc. v. Miramar Quick Serv. Rest. Corp.*,  
2020 WL 4516289, at \*3 (6th Cir. 2020) (order)”

Although Plaintiff intends to, and will, adduce proof of the  
*Sleekcraft* factors, the presumption exists, and it is entitled to

1 stand on this presumption alone. *See also, Brookfield Commc'ns,*  
2 *Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1056 (9th Cir. 1999)  
3 (“In light of the virtual identity of marks, if they were used with  
4 identical products or services likelihood of confusion would  
5 follow as a matter of course”); *Park 'n Fly, Inc. v. Dollar Park &*  
6 *Fly, Inc.*, 782 F.2d 1508, 1509 (9th Cir. 1986) (holding that when  
7 marks and services are identical and channels are the same,  
8 likelihood of confusion is assumed, even if the other factors  
9 weight against); *see also Blue Mako Inc. v. Minidis*, No. CV 07-  
10 916 AHM (SHX), 2008 WL 11334205 (C.D. Cal. June 23, 2008)  
11 (applying these principles to similar facts).

12 4. Defendants’ Position Statement: Defendants are not going  
13 to argue no likelihood of confusion arising from continuous  
14 use of registered and unregistered trademarks if  
15 Defendants do not prevail on ownership or authorization.  
16 However, this is not a “trade dress” case. The legal issues  
17 set for trial in the Proposed Final Pretrial Conference Order  
18 (Dkt. No. 244), Memoranda of Contentions of Law and  
19 Fact (Dkt. Nos. 197 and 199) and pleadings regard  
20 ownership of and authorization to use the U.S. Potato  
21 Corner trademarks; there is no “trade dress” issue in the  
22 pleadings set for trial. Moreover, “same as” comparative  
23 advertising of taste or fragrance is not unfair competition.  
24 *Smith v. Chanel, Inc.*, 402 F.2d 562, 563 (9th Cir.  
25 1968). Further, proffered “former location” confusion is  
26 not actionable in California (*see* Bus. & Prof. Code §  
27 16600) nor proves or is probative of ordinary consumer  
28 confusion that is the subject of the Lanham Act after the

1 market settles from a partnership divorce, especially after  
2 Plaintiff is the one who changed the *status quo* and caused  
3 any confusion.

4 5. Plaintiff's Supporting Evidence: Trial Exhibit 29 (May 31,  
5 2024 Termination); photographs of various stores taken  
6 from May 31, 2025 through the present; Testimony of  
7 Koren; Plaintiff executives Gregorio (Plaintiff's CEO),  
8 Concepcion (Plaintiff's COO charged with US operations),  
9 Tan (Director responsible for international franchising);  
10 investigator; Franchisees; Kim Lambert and Barry Kurtz;  
11 in addition to the following documents Amended Joint  
12 Venture Agreement and Joint Venture Agreement; the  
13 COO of SPAVI, Mr. Concepcion, the Franchise  
14 Agreements, FDDs, and leases, of PCJV over the years.

15 6. Defendants' Supporting Evidence: documents and  
16 testimony including and related to (1) Defendants'  
17 ownership of the U.S. Potato Corner trademarks, which  
18 merely are a symbol of PCJV USA, LLC's business and  
19 restaurant and catering services; (2) Defendants'  
20 authorization to use the U.S. Potato Corner trademarks; (3)  
21 no consumer survey evidence; (4) no evidence of  
22 actionable ordinary consumer confusion but just  
23 speculation about market conditions after the market  
24 stabilizes, let alone actionable confusion attributable to  
25 alleged unfair competition framed by the Proposed Final  
26 Pretrial Conference Order (Dkt. No. 244), Memoranda of  
27 Contentions of Law and Fact (Dkt. Nos. 197 and 199) and  
28 pleadings; (5) no marketplace confusion before Plaintiff

1 brought this action; (6) any marketplace confusion would  
2 stem from Plaintiff's efforts to create it rather than Plaintiff  
3 just filing an action for declaratory relief to resolve  
4 ownership and authorization issues after it acquired  
5 contested assets in the middle of franchise litigation  
6 between joint venture partners; and (7) Plaintiff's  
7 suppression of evidence, including Plaintiff's  
8 communications with U.S. franchisees under contract with  
9 PCJV USA, LLC that were timely requested and ordered  
10 be produced

11 e. Element No. 5: Damage caused by false designation.

12 1. This element is disputed.

13 2. Nature of Dispute: Legal and factual

14 3. Plaintiff's Legal Position: The standard to be followed is  
15 set forth in 15 USC § 1117 which only requires this Court's  
16 approval in equity to proceed with money damages. The  
17 Courts have, contrary to Defendant's apparent position,  
18 removed the requirement of willfulness to obtain  
19 disgorgement., *Romag Fasteners, Inc. v. Fossil, Inc.*, —  
20 U.S. —, 140 S. Ct. 1492, 1495-97, 206 L.Ed.2d 672  
21 (2020) (holding willfulness is not a precondition to  
22 disgorgement of profits under the Lanham Act). (Dkt. No.  
23 594.) Defendants ignore the difference between normal  
24 infringement and this case, the holdover licensee, where  
25 the standard for likelihood of confusion is lowered, and  
26 even sometimes presumed, and irreparable harm is also  
27 presumed. The Lanham Act allows Defendants to raise the  
28 other arguments to rebut the presumption of irreparable

1 harm, but the standard as applied here allows for  
2 disgorgement.

3 4. Defendants' Position Statement: Likelihood of confusion,  
4 when coupled with likely irreparable harm, is the standard  
5 for injunctive relief, the primary remedy under the Lanham  
6 Act (*National Grange of the Order of Patrons of*  
7 *Husbandry v. Cal. State Grange*, 182 F.Supp. 3d 1065,  
8 1071 (E.D. Cal. 2016)), the benefits of which Plaintiff has  
9 already obtained in this case by flipping franchisees under  
10 contract with Defendants to join its organization—  
11 notwithstanding PCJV USA, LLC's rebranding rights and  
12 obligations disclosed in FDDs; Plaintiff fails to  
13 acknowledge its legal and higher burden of proof to  
14 establish an entitlement to monetary recovery, whether  
15 legal damages (which Plaintiff is not pursuing as there is  
16 no evidence it has a legal right to conduct a franchise  
17 business in California or elsewhere in the United States) or  
18 disgorgement—both of which stem from actual confusion  
19 in the market not attributable to Plaintiff's own conduct as  
20 proof of a defendant actually trading on the goodwill of  
21 another resulting in either lost profits or unjust enrichment  
22 (*Gracie v. Gracie*, 217 F.3d 1060, 1068 (9th Cir. 2000)); in  
23 addition to there being no consumer survey evidence or  
24 probative evidence of actual confusion not attributable to  
25 Plaintiff's own conduct (let alone attributable to trademark  
26 infringement), Defendants' exercise of bona fide good faith  
27 belief not to waive (a) pre-existing partnership (whether  
28 ownership or authorization) rights and obligations to use

1 and control the U.S. trademarks and to equally receive  
2 service fees if any royalties were paid to the registrant  
3 when (b) Plaintiff allegedly acquired U.S. Potato Corner  
4 trademarks in the middle of franchise litigation between  
5 joint venture partners, (c) over Defendants' objection, (d)  
6 initiating this lawsuit in a conspiracy 3 days after the  
7 settlement with Plaintiff's assignor to circumvent a state  
8 court injunction rather than go to trial in state court, (e)  
9 disregarding a tolling agreement to continue discussions  
10 and not filing an action for declaratory relief if there was  
11 an impasse to determine who has superior trademark rights,  
12 (f) creating the risk of marketplace confusion by virtue of  
13 its own conduct; and (e) suppressing evidence, including  
14 properly served discovery ordered to be produced, does not  
15 satisfy Plaintiff's legal burden of proof. *See Yuga Labs,*  
16 *Inc. v. Ripps*, Case No. CV 22-4355-JFW(JEMx), 2023  
17 WL 7089922, at \*10 (C.D. Cal. Oct. 25, 2023) (while  
18 totality of the circumstances are used to determine an  
19 award of profits, "defendant's mental state is 'a highly  
20 important consideration . . . .'").

21 5. Plaintiff's Supporting Evidence: Defendants have  
22 produced financials for the period in question May 31,  
23 2024 through the present, and, given that the entirety off  
24 their business is built off the confusion, we only need to  
25 prove profits which can be disgorged. Thus, the financials  
26 as well as Koren testimony and testimony of franchisees as  
27 well; as correspondence regarding costs of goods sold as  
28 well as the testimony of the CFO of Shakley's will

1 establish damage. No expert is needed for arithmetic. To  
2 the contrary, it is Defendant who bears a heavier burden of  
3 establishing what costs or expenses “actually contributed  
4 to the sale of the infringing products.” *Monster Energy Co.*  
5 *v. Integrated Supply Network, LLC*, 533 F. Supp. 3d 928,  
6 938 (C.D. Cal. 2021)

7 6. Defendant’s Supporting Evidence: documents and  
8 testimony including and related to (1) the parties’ meeting  
9 of the minds and partnership agreement to co-own Potato  
10 Corner in the United States, where Defendants promised to  
11 contribute services and Plaintiff promised to vest IP rights  
12 in the partnership as supported by written agreements and  
13 verified pleadings; (2) the JVA and related agreements  
14 vesting licensing and quality control in PCJV USA, LLC’s  
15 President, approval of franchise agreements, including as  
16 disclosed in FDDs, in PCJV USA, LLC’s Management,  
17 and authority to manage Potato Corner in the United States  
18 in PCJV USA, LLC’s executive officers (not Cinco  
19 Corporation); (3) absent a license agreement, PCJV USA,  
20 LLC’s use of the U.S. Potato Corner marks inured to PCJV  
21 USA, LLC’s benefit; (4) Defendants’ continuing  
22 authorization to use the U.S. Potato Corner trademarks  
23 under a lifetime, 50-year, or non-terminable-at-will  
24 license, including for the reasons stated herein; (5)  
25 Defendants’ objection to Plaintiff’s announced plans to  
26 acquire Cinco Corporation’s assets and liabilities, but  
27 representations to Defendants that they would be bound by  
28 a settlement with Cinco resolving licensing issues; (6) the



parties' tolling agreement, including to continue discussions after Defendants separately settled with Cinco Corporation; (7) Plaintiff and Cinco Corporation's bad faith conspiracy to initiate this lawsuit 3 days after the settlement with Plaintiff's assignor to circumvent a state court injunction rather than go to trial in state court or settle with Defendants; (8) Plaintiff's own misconduct creating the risk of marketplace confusion; (9) no consumer survey evidence or evidence of marketplace confusion attributable to trademark infringement or unfair competition that is the subject of this case; (10) Plaintiff's suppression of evidence, including properly served discovery ordered to be produced; (11) no evidence of unjust enrichment, including no net profits or net profits attributable to the alleged infringement at issue, to disgorge; and (12) no evidence regarding individual Defendants' responsibility

3) **Claim 4: Contributory Trademark Infringement Against All Defendants (Against Guy Koren, PCJV USA, LL, PCI Trading, LLC, Potato Corner LA Group, LLC; GK Capital, LLC or NKM Capital Group, LLC)**

a. Element No. 1: inducement of any Defendant to infringe one of the Marks (affirmative steps or actions taken to encourage infringement, exercising control over means of infringement, offering tools to assist in infringement, instructing how to infringe).

1. This element is disputed.

2. Nature of Dispute: Legal and Factual



- 1                   3.    Plaintiff's Position Statement: it is assumed that the  
2                   primary dispute by Defendants here will be as to the  
3                   underlying question of infringement (ownership, license,  
4                   etc.). But if it is true that Plaintiff owned the Marks, and  
5                   had exclusive right to control them and Defendants lost  
6                   their right on May 31, 2024, the question is fairly on the  
7                   table whether (1) PCJV, the former licensees of the brand,  
8                   engaged in post termination contribution or inducement to  
9                   its sublicensees whose rights had also been terminated by  
10                  giving them aid and comfort (and collecting money from  
11                  them) after termination,, or (2) the supply chain affiliate  
12                  PCI Trading's sales of infringing cups etc. was constituted  
13                  contribution or inducement, or (3) whether Koren, the  
14                  owner or operator oof them all was also responsible for  
15                  contribution or inducement. 115 USC 1114; *Fonovisa, Inc.*  
16                  *v. Cherry Auction, Inc.*, 76 F.3d 259, 264–65 (9th Cir.  
17                  1996) (applied to host of swap meets when host know  
18                  infringement was occurring); *citing Inwood Lab'ys, Inc. v.*  
19                  *Ives Lab'ys, Inc.*, 456 U.S. 844, 854 (1982); *see Inwood*  
20                  *Lab'ys, Inc.*, 456 U.S. at 844, 854 (1982) (explaining that  
21                  when a party “suppl[ies]] its product to one whom it knows  
22                  or has reason to know is engaging in trademark  
23                  infringement, the manufacturer or distributor is  
24                  contributorily responsible for any harm done as a result of  
25                  the deceit”).
- 26                4.    Defendants' Position Statement: To establish liability for  
27                contributory infringement, Plaintiff bears the burden of  
28                proving the defendant had intent to cause direct

1 infringement or prior knowledge of direct infringement.  
2 *See Perfect 10, Inc. v. Visa Intern. Service Ass'n*, 494 F.3d  
3 788, 807 (9th Cir. 2007). That is not the same thing as  
4 having knowledge of a bona fide dispute over trademark  
5 ownership or authorization to use a trademark. Similarly,  
6 officer or director liability includes a knowledge  
7 requirement to establish liability. *SinCo Technologies Pte*  
8 *Ltd. v. SinCo Electronics*, Case No. 17-cv-05517-EMC,  
9 2018 WL 10638468, at \*1 (N.D. Cal. Jan. 5, 2018).

10 5. Plaintiff's Supporting Evidence: Testimony and statements  
11 of Koren, franchisees, and SPAVI executives after  
12 termination; correspondence with franchisees by SPAVI;  
13 Franchise agreements and FDDs.

14 6. Defendants' Supporting Evidence: documents and  
15 testimony including and related to (1) the evidentiary  
16 record establishing a bona fide trademark dispute over  
17 ownership and authorization to use the U.S. Potato Corner  
18 trademarks; (2) the alleged contributory infringing  
19 Defendants did not have the intent to cause infringement or  
20 knowledge that direct infringement was occurring; (3) the  
21 alleged contributory infringing Defendants are not  
22 similarly situated, including because some our downstream  
23 users (who contributing nothing upstream) and one is  
24 simply a supplier of publicly available materials; (4) Mr.  
25 Koren, as an officer or member of Defendant entities, also  
26 had no intent to confuse consumers, had no intent to trade  
27 off the goodwill he did not own or have authorization to  
28

1 use, and had good faith reasons to believe that trademark  
2 infringement was not occurring.

3 b. Element No. 2: Material contribution

- 4 1. This element is disputed.
- 5 2. Nature of Dispute: Factual
- 6 3. Plaintiff's Supporting Evidence: testimony of Koren, his  
7 staff, franchisees, and their communications
- 8 4. Defendants' Supporting Evidence: documents and  
9 testimony including and related to whether the contribution  
10 of each Defendant was material to the alleged infringement  
11 and was provided with the requisite knowledge.

12 c. Element No. 3: Injury to Plaintiff.

- 13 1. This element is disputed
- 14 2. Nature of Dispute: Legal and Factual
- 15 3. Plaintiff's Position Statement: The standard to be followed  
16 is set forth in 15 USC 1117 which only requires this Court's  
17 approval in equity to proceed with money damages. The  
18 Courts have contrary to Defendant's apparent position  
19 removed the requirement of willfulness to obtain  
20 disgorgement., [\*Romag Fasteners, Inc. v. Fossil, Inc.\*, —  
21 U.S. —, 140 S. Ct. 1492, 1495-97, 206 L.Ed.2d 672  
22 \(2020\)](#) (holding willfulness is not a precondition to  
23 disgorgement of profits under the Lanham Act). (Dkt. No.  
24 594.) Defendants ignore the difference between normal  
25 infringement and this case, the holdover licensee, where  
26 the standard for likelihood of confusion is lowered, and  
27 even sometimes presumed, and irreparable harm is also  
28 presumed. The Lanham Act allows Defendants to raise the

1 other arguments to rebut the presumption of irreparable  
2 harm, but the standard as applied here allows for  
3 disgorgement.

4 4. PCJV USA Parties' Position Statement: Defendants  
5 incorporate their positions legal positions above regarding  
6 liability and damages for direct infringement and liability  
7 for contributory infringement. In addition, damages for  
8 contributory infringement should not be awarded upstream

9 5. Plaintiff's Supporting Evidence: Defendants have  
10 produced financials for the period in question May 31,  
11 2024 through the present, and, given that the entirety of  
12 their business is built off the confusion, we only need to  
13 prove profits which can be disgorged. Thus, the financials  
14 as well as Koren testimony and testimony of franchisees as  
15 well; as correspondence regarding costs of goods sold as  
16 well as the testimony of the CFO of Shakley's will  
17 establish damage. No expert is needed for arithmetic. To  
18 the contrary, it is Defendant who bears a heavier burden of  
19 establishing what costs or expenses "actually contributed  
20 to the sale of the infringing products." *Monster Energy Co.*  
21 *v. Integrated Supply Network, LLC*, 533 F. Supp. 3d 928,  
22 938 (C.D. Cal. 2021)

23 6. Defendants' Supporting Evidence: Defendants incorporate  
24 their above record

25 4) **Claim 5: Contributory False Designation of Origin Against Guy**  
26 **Koren, PCJV USA, LL, PCI Trading, LLC, Potato Corner LA**  
27 **Group, LLC; GK Capital, LLC or NKM Capital Group, LLC**  
28

- 1 a. Element No. 1: inducement of any Defendant to make use a false  
2 designation, such as a word, term, name, device, or a combination  
3 thereof, or a false designation of origin (affirmative steps or  
4 actions taken to encourage infringement, exercising control over  
5 means oof infringement, offering tools to assist in infringement,  
6 instructing how to infringe).
- 7 ii. This element is disputed.
- 8 iii. Nature of Dispute: Legal and Factual
- 9 iv. Plaintiff's Position Statement: it is assumed that the  
10 primary dispute by Defendants here will be as to the  
11 underlying question of infringement (ownership, license, etc.).  
12 But if it is true that Plaintiff owned the Marks, and had  
13 exclusive right to control them and Defendants lost their right  
14 on May 31, 2024, the question is fairly on the table whether (1)  
15 PCJV, the former licensees of the brand, engaged in post  
16 termination contribution or inducement to its sublicensees  
17 whose rights had also been terminated by giving them aid and  
18 comfort (and collecting money from them) after termination,,  
19 or (2) the supply chain affiliate PCI Trading's sales of  
20 infringing cups etc. was constituted contribution or  
21 inducement, or (3) whether Koren, the owner or operator oof  
22 them all was also responsible for contribution or inducement.  
23 115 USC 1114; *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d  
24 259, 264–65 (9th Cir. 1996) (applied to host of swap meets  
25 when host know infringement was occurring); *citing Inwood*  
26 *Lab'ys, Inc. v. Ives Lab'ys, Inc.*, 456 U.S. 844, 854 (1982); *see*  
27 *Inwood Lab'ys, Inc.*, 456 U.S. at 844, 854 (1982) (explaining  
28 that when a party “suppl[ies]] its product to one whom it

1 knows or has reason to know is engaging in trademark  
2 infringement, the manufacturer or distributor is contributorily  
3 responsible for any harm done as a result of the deceit”).

4 v. Defendants’ Position Statement: To establish liability for  
5 contributory infringement, Plaintiff bears the burden of  
6 proving the defendant had intent to cause direct infringement  
7 or prior knowledge of direct infringement. *See Perfect 10, Inc.*  
8 *v. Visa Intern. Service Ass’n*, 494 F.3d 788, 807 (9th Cir.  
9 2007). That is not the same thing as having knowledge of a  
10 *bona fide* dispute over trademark ownership or authorization to  
11 use a trademark. Similarly, officer or director liability includes  
12 a knowledge requirement to establish liability. *SinCo*  
13 *Technologies Pte Ltd. v. SinCo Electronics*, Case No. 17-cv-  
14 05517-EMC, 2018 WL 10638468, at \*1 (N.D. Cal. Jan. 5,  
15 2018).

16 vi. Plaintiff’s Supporting Evidence: Testimony and  
17 statements of Koren, franchisees, and SPAVI executives after  
18 termination; correspondence with franchisees by SPAVI;  
19 Franchise agreements and FDDs.

20 vii. Defendants’ Supporting Evidence: documents and  
21 testimony including and related to (1) the evidentiary record  
22 establishing a *bona fide* trademark dispute over ownership and  
23 authorization to use the U.S. Potato Corner trademarks; (2) the  
24 alleged contributory infringing Defendants did not have the  
25 intent to cause infringement or knowledge that direct  
26 infringement was occurring; (3) the alleged contributory  
27 infringing Defendants are not similarly situated, including  
28 because some our downstream users (who contributing nothing

1 upstream) and one is simply a supplier of publicly available  
2 materials; (4) Mr. Koren, as an officer or member of  
3 Defendant entities, also had no intent to confuse consumers,  
4 had no intent to trade off the goodwill he did not own or have  
5 authorization to use, and had good faith reasons to believe that  
6 trademark infringement was not occurring.

7 b. Element No. 2: Material contribution

8 i. This element is disputed.

9 ii. Nature of Dispute: Factual

10 iii. Plaintiff's Supporting Evidence: testimony of Koren, his  
11 staff, franchisees, and their communications

12 iv. Defendants' Supporting Evidence: documents and  
13 testimony including and related to whether the contribution of  
14 each Defendant was material to the alleged infringement and  
15 was provided with the requisite knowledge.

16 c. Element No. 3: Injury to Plaintiff.

17 i. This element is disputed.

18 ii. Nature of Dispute: Legal and factual

19 ii. Plaintiff's Position Statement: The standard to be followed is  
20 set forth in 15 USC 1117 which only requires this Court's  
21 approval in equity to proceed with money damages. The  
22 Courts have contrary to Defendant's apparent position  
23 removed the requirement of willfulness to obtain  
24 disgorgement., [\*Romag Fasteners, Inc. v. Fossil, Inc.\*, — U.S.](#)  
25 [—, 140 S. Ct. 1492, 1495-97, 206 L.Ed.2d 672](#)  
26 [\(2020\)](#) (holding willfulness is not a precondition to  
27 disgorgement of profits under the Lanham Act). (Dkt. No.  
28 594.) Defendants ignore the difference between normal

1 infringement and this case, the holdover licensee, where the  
2 standard for likelihood of confusion is lowered, and even  
3 sometimes presumed, and irreparable harm is also presumed.  
4 The Lanham Act allows Defendants to raise the other  
5 arguments to rebut the presumption of irreparable harm, but  
6 the standard as applied here allows for disgorgement,

7 iii. PCJV USA Parties' Position Statement: Defendants  
8 incorporate their legal positions above regarding liability and  
9 damages for direct infringement and liability for contributory  
10 infringement. In addition, damages for contributory  
11 infringement should not be awarded upstream.

12 iv. Plaintiff's Supporting Evidence: Defendants have  
13 produced financials for the period in question May 31, 2024  
14 through the present, and, given that the entirety off their  
15 business is built off the confusion, we only need to prove  
16 profits which can be disgorged. Thus, the financials as well as  
17 Koren testimony and testimony of franchisees as well; as  
18 correspondence regarding costs of goods sold as well as the  
19 testimony of the CFO of Shakley's will establish damage. No  
20 expert is needed for arithmetic. To the contrary, it is  
21 Defendant who bears a heavier burden of establishing what  
22 costs or expenses "actually contributed to the sale of the  
23 infringing products." *Monster Energy Co. v. Integrated*  
24 *Supply Network, LLC*, 533 F. Supp. 3d 928, 938 (C.D. Cal.  
25 2021)

26 iii. Defendants' Supporting Evidence: Defendants incorporate  
27 their above record.

28 **2) Claim 6: Common Law Trademark Infringement Against All**



**Defendants (Against Guy Koren, PCJV USA, LL, PCI Trading, LLC,  
Potato Corner LA Group, LLC; GK Capital, LLC or NKM Capital  
Group, LLC).**

a. Element No. 1: the Word Mark, Slogan Mark, and/or the Logo Mark (all collectively, the “Marks”) are valid and protectible trademarks:

i. This element is undisputed

b. Element No. 2: Plaintiff owns the Word Mark, Slogan Mark, and/or the Logo Mark

i. This element is disputed.

ii. Nature of Dispute: Factual and Legal.

iii. Plaintiff’s Legal Position: Defendants do not dispute that the registrations for all three Marks (Trial Exhibit Nos. 1, 3, and 5) identify Cinco as the registrant and the first to use each of the three Marks, nor do Defendants dispute that the Deeds of Assignment attached to the notices filed with the USPTO (Trial Exhibit Nos. 4 and 6) confirm that, unequivocally and without exception, the entirety of these Marks were sold and assigned to Plaintiff, along with all the goodwill arising out of or associated with the Marks. Defendants also do not dispute the testimony of Seller (Cinco) and Buyer (SPAVI) that the Deeds are accurate in every way, that the sale and assignments were comprehensive, without carve outs, and fully consummated. Instead, Defendants take internally inconsistent positions that are contradicted by various legal doctrine, including the ones discussed *supra*: Licensee Estoppel, the Lanham Act provisions rendering Defendants’ positions contrary to federal law, Law of the Case, that the Authorities

1 cited by Defendants do not support their position, including  
2 *Sengoku*, the Merger Doctrine, and Defendants' standing.

3 ii. Defendants' Position Statement: Defendants incorporate their  
4 legal positions above

5 iii. Plaintiff's Supporting Evidence: Notarized Deeds signed by  
6 seller and buyer; USPTO filings including Registrations and  
7 Assignments, testimony of Gregorio (Plaintiff's CEO),  
8 Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
9 Counsel), FDDs, Franchise Agreements.

10 iv. Defendants' Supporting Evidence: Defendants incorporate their  
11 above factual positions

12 c. Element No. 3: Defendants used Word Mark, Slogan Mark, and/or the  
13 Logo Mark in interstate commerce after May 31, 2024:

14 i. This element is undisputed.

15 d. Element No. 4: Defendants' use of the Word Mark, Slogan Mark,  
16 and/or the Logo Mark in interstate commerce after May 31, 2024, was  
17 without the consent of Plaintiff and in a manner likely to cause  
18 confusion among ordinary consumers as to the source, sponsorship,  
19 affiliation, or approval of the services.

20 ii. This element is disputed.

21 iii. Nature of Dispute: Legal and Factual

22 iv. Plaintiff's Legal Position: As for absence of consent, given the  
23 absence of any ownership rights, Defendants must locate  
24 some rights as a licensee of the owner (SPAVI). Defendants  
25 offer two documents proffered as agreements that bind Cinco  
26 to a perpetual license. Neither work as a matter of law. First,  
27 they offer the unsigned October 10, 2010, document  
28 containing terms for a Master License Agreement (Trial

1 Exhibit No. 11), which this Court (and the Ninth Circuit) have  
2 reviewed. Both have interpreted it as a matter of law,  
3 concluding that it is an unsigned draft (as Koren’s testimony  
4 has confirmed) and illusory because the licensor is given no  
5 consideration for this purported agreement. The unsigned  
6 document cannot, as a matter of law, have bound Cinco, even  
7 through implied contract law, because Cinco did not do  
8 anything in furtherance of that document to imply its assent.  
9 Moreover, multiple times after October 10, 2010, documents  
10 were signed stating that Cinco would be expecting a 30%  
11 royalty recovery. Second, Plaintiffs point to § 3(g) of an  
12 Amended Joint Venture Agreement (and its predecessor the  
13 Joint Venture Agreement) – Trial Exhibit Nos. 8 and 9 – which  
14 this Court has already interpreted to constitute an agreement to  
15 agree, in the future, with Cinco on a license agreement. As the  
16 Ninth Circuit said in affirming this conclusion, “the AJVA  
17 contained an agreement to enter a *future* Master License  
18 Agreement, not a “perpetual license” like PCJV claims.”  
19 *Shakeys Pizza Asia Ventures, Inc. v. PCJV USA, LLC*, No. 24-  
20 7084, 2025 WL 1431270, at \*1 (9th Cir. May 19, 2025) (citing  
21 *First Nat’l Mortg. Co. v. Fed. Realty Inv. Tr.*, 631 F.3d 1058,  
22 1065 (9th Cir. 2011) (“[A]n ‘agreement to agree,’ without  
23 more, is not a binding contract.”). This interpretation of the  
24 AJVA and JVA is a legal conclusion, which, as affirmed by  
25 the Ninth Circuit are legal conclusions, and, as such, these are  
26 pure conclusions of law, which means: **this Court’s**  
27 **conclusion that § 3(g) of the JVA and AJVA are**  
28 **agreements to agree and do not bind Cinco to a**

1 **“perpetual license” are law of the case and cannot be**  
2 **disturbed or challenged at trial.** This theory based on  
3 interpretation of a contract has been considered and rejected by  
4 this Court and the Ninth Circuit in this case, and because it is  
5 a “pure issue[] of law, however, [it is] binding” on Defendants  
6 under law of the case. *Ranchers Cattlemen Action Legal Fund*  
7 *United Stockgrowers of Am. v. U.S. Dep't of Agr.*, 499 F.3d  
8 1108, 1114 (9th Cir. 2007); *see, e.g. Arizona v. California*, 460  
9 U.S. 605, 618 (1983) ((citing the rule as being “when a court  
10 decides upon a rule of law, that decision should continue to  
11 govern the same issues in subsequent stages in the same  
12 case”). Defendants now trot out other theories such the fact  
13 that the JVA and prior Operating Agreement are still  
14 somewhat live under a theory of partial integration, however,  
15 the following point prevails over each of these contortions:  
16 Defendants can point to no agreement or document, or acct, or  
17 statement, binding Cinco to a perpetual, irrevocable, royalty  
18 free licensee of its Marks. As such, in the absence of any  
19 written agreement, or documentation of any license terms, the  
20 sole license that existed as of May 31, 2024, was implied and  
21 terminable at will *See Pogrebnoy v. Russian Newspaper*  
22 *Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal.  
23 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018) (“[A]n implied  
24 license, like any other contract, is terminable at the will of  
25 either party if it is not for a specified term.”). One final flaw  
26 exists in the attempt to bind Cinco to the AJVA, and that is  
27 one of issue preclusion in favor of Plaintiffs. As evidenced by  
28 Plaintiff's own Third Amended Complaint (verified) in the

1 Prior Governance Action, the entire pleading is based on the  
2 theory that -- and it sought judgment concluding that -- Cinco  
3 is an alter ego of the entity that was a 60% member of PCJV.  
4 (See Trial Exhibit No. 1421 p. 7:3-14.) Such allegations,  
5 having been dismissed, with prejudice, by Koren, re4nder  
6 thee accusations extinguished, and, as such, Defendants are  
7 precluded from alleging them ever again.

8 Regarding likelihood of confusion, which may be presumed,  
9 and the jury may be so instructed “[w]here,’ as here, “a  
10 licensee persists in the unauthorized use of a licensor's  
11 trademark, courts have found that the continued use alone  
12 establishes a likelihood of consumer confusion.” *Robert Trent*  
13 *Jones II, Inc. v. GFSI, Inc.*, 537 F. Supp. 2d 1061, 1065 (N.D.  
14 Cal. 2008) (citing and quoting *Sun Microsystems v. Microsoft*  
15 *Corp.*, 999 F.Supp. 1301, 1311 (N.D.Cal.1998) (citing *Paisa,*  
16 *Inc. v. N & G Auto, Inc.*, 928 F.Supp. 1009, 1012 n. 4  
17 (C.D.Cal.1996); *Hollywood Athletic Club*, 938 F.Supp. at 614–  
18 15 (C.D.Cal.1996)). The Sixth Circuit’s analysis in Max Rack,  
19 Inc. v. Core Health & Fitness, LLC, 40 F.4th 454, 464 (6th Cir.  
20 2022) is instructive:

21  
22 “A separate body of law has developed for this  
23 distinct claim that a holdover licensee has  
24 continued to use a licensor's mark after their  
25 agreement expired. *See* 4 McCarthy, *supra*, §  
26 25:31 (citing cases). In this context, courts have  
27 jettisoned the usual totality-of-the-circumstances  
28 test in favor of a more categorical rule: “proof of  
continued, unauthorized use of an original  
trademark by one whose license to use the  
trademark had been terminated is sufficient to  
establish ‘likelihood of confusion.’ ” *U.S.*

1 *Structures, Inc. v. J.P. Structures, Inc.*, 130 F.3d  
2 1185, 1190 (6th Cir. 1997); *ITT Indus., Inc. v.*  
3 *Wastecorp. Inc.*, 87 F. App'x 287, 293 (3d Cir.  
4 2004); *Gorenstein Enters., Inc. v. Quality Care-*  
5 *USA, Inc.*, 874 F.2d 431, 435 (7th Cir. 1989);  
6 *Burger King Corp. v. Mason*, 710 F.2d 1480,  
7 1492–93 (11th Cir. 1983); *Pro. Golfers Ass'n of*  
8 *Am. v. Bankers Life & Cas. Co.*, 514 F.2d 665, 670  
9 (5th Cir. 1975); *L & L Wings, Inc. v. Marco-*  
10 *Destin, Inc.*, 676 F. Supp. 2d 179, 188 (S.D.N.Y.  
11 2009). This rule makes good sense when a  
12 holdover licensee blatantly infringes the licensor's  
13 mark by using that mark in the same way as it did  
14 before the agreement expired. Without any need to  
15 tick through factors, it should be obvious that  
16 consumers will believe, for example, that a pizza  
17 restaurant remains affiliated with the “Little  
18 Caesars” chain when a terminated franchisee  
19 continues to operate the pizzeria as a Little  
20 Caesars. *See Little Caesar Enters., Inc. v. Miramar*  
21 *Quick Serv. Rest. Corp.*, 2020 WL 4516289, at \*3  
22 (6th Cir. 2020) (order)”

23 Although Plaintiff intends to, and will, adduce proof of the  
24 *Sleekcraft* factors, the presumption exists, and it is entitled to  
25 stand on this presumption alone.

26 v. Defendants’ Position Statement: Defendants incorporate all  
27 their above legal positions.

28 vi. Plaintiff’s Supporting Evidence: Trial Exhibit 29 (May 31,  
2024 Termination); photographs of various stores taken from  
May 31, 2025 through the present; Testimony of Koren;  
Plaintiff executives Gregorio (Plaintiff’s CEO), Concepcion  
(Plaintiff’s COO charged with US operations), Tan (Director  
responsible for international franchising); investigator;  
Franchisees; Kim Lambert and Barry Kurtz; in addition to the

1 following documents Amended Joint Venture Agreement and  
2 Joint Venture Agreement.

3 vii. Defendants' Supporting Evidence: Defendants  
4 incorporate their above factual positions.

5 **3) Claim 9 (from FAC, Dkt. 65): Quantum Meruit Against PCJV**

6 a. Element No. 1: That Defendant requested, by words or conduct, that  
7 Plaintiff provide a license to use the Potato Corner Intellectual  
8 Property for the benefit of Defendant PCJV;

9 i. This element is disputed.

10 ii. Nature of Dispute: Legal and Factual

11 iii. Plaintiff's Position Statement: Defendants' issues are factual and  
12 not legal.

13 iv. Defendants' Position Statement: *Quantum meruit* is an implied  
14 contract (or quasi-contract) claim stemming from requested  
15 services "under which a plaintiff who has rendered services  
16 benefiting the defendant may recover the reasonable value of  
17 those services when necessary to prevent unjust enrichment of  
18 the defendant." *In re De Laurentiis Ent. Grp. Inc.*, 963 F.2d  
19 1269, 1272 (9th Cir. 1992). Plaintiff will be unable to establish  
20 liability for *quantum meruit* for three reasons: Defendants (1)  
21 "requested" no (2) "services" from Plaintiff for which Plaintiff  
22 had a (3) "reasonable expectation" of payment. *See McLeod v.*  
23 *Zero Gravity Mgmt.*, 2:22-CV-01547-FWS-AGR, 2024 WL  
24 3304527, at \*10 (C.D. Cal. Jan. 8, 2024); *see also Corsini v.*  
25 *Canyon Equity, LLC*, C-10-2061-JL, 2011 WL13247447, at \*6  
26 (N.D. Cal, May 23, 2011). Plaintiff's quantum meruit cause of  
27 action does not contain critical elements of the cause of action.  
28 *See* CACI No. 317.



- 1 v. Plaintiff's Supporting Evidence: Course of Dealings between  
2 Defendants and SPAVI,. Specifically, Defendants have no  
3 evidence of a written license to use SPAVI's Potato Corner  
4 Intellectual Property, and, as such, its rights (that it has sold to  
5 its franchisees) derive from what is, at best, a terminable at will,  
6 fully revocable license because Defendants were nonetheless  
7 operating Potato Corner locations, as if a written license existed.  
8 *See Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F.  
9 Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291  
10 (9th Cir. 2018) ("[A]n implied license, like any other contract, is  
11 terminable at the will of either party if it is not for a specified  
12 term."). After SPAVI's acquisition of the Potato Corner brand, it  
13 became the licensor of the Potato Corner Intellectual Property.  
14 Between December of 2021 through 2024, the months  
15 immediately preceding this action, SPAVI engaged in a good  
16 faith and exhaustive attempt to negotiate the terms of a written  
17 license with PCJV. Defendant Guy Koren engaged and  
18 participated in this negotiation; Testimony of Koren, Plaintiff  
19 executives Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's  
20 COO charged with US operations), Tan (Director responsible  
21 for international franchising), Magsaysay (Cinco's CEO);  
22 Emails and correspondence with SPAVI, Koren, and PCJV  
23 relating to negotiations of a licensing agreement for the use of  
24 the Potato Corner Intellectual Property; Amended Joint Venture  
25 Agreement; Franchise Agreements; FDDs  
26 vi. Defendants' Supporting Evidence: (1) There was no request for  
27 services; PCJV USA, LLC's objected to Plaintiff's transaction  
28 with its former fiduciary and joint venture partner Cinco

1 Corporation and asserted its pre-existing rights to use and  
2 control Potato Corner in the United States; it did not “request”  
3 any services from Plaintiff; rather, PCJV USA, LLC’s became  
4 subject to an involuntary interloper in breach of Cinco  
5 Corporation’s fiduciary and contractual obligations; (2) No  
6 “services” were provided by Plaintiff to PCJV USA, LLC’s  
7 within the meaning of *quantum meruit* even according to  
8 Plaintiff’s own authority cited in its Memorandum of  
9 Contentions of Law and Fact (Dkt. No. 199, citing *Cosmonova,*  
10 *LLC v. BioFilm, Inc.*, 763 F. Supp. 3d 1157 (S.D. Cal. 2025)  
11 (dismissing quantum meruit claim)). Rather, Plaintiff allegedly  
12 provided an implied “at-will” license allegedly extinguishing  
13 PCJV USA, LLC’s long-term right to use and/or to a long-term  
14 license, which was beneficial to Plaintiff, indeed far more  
15 beneficial to Plaintiff, and thus not a “service” within the  
16 meaning of *quantum meruit*. *Cosmonova, LLC*, 763 F. Supp. 3d  
17 at 1172. (3) Plaintiff had no reasonable expectation of any  
18 royalty payment to Plaintiff for the same reason no royalty is  
19 recoverable under the Lanham Act. Plaintiff never paid a royalty  
20 to Cinco Corporation, no claim for breach of contract was  
21 brought by Cinco Corporation, and Plaintiff cannot put itself  
22 into a better situation than its assignor, Cinco Corporation. *See*  
23 *McCarthy, supra*, § 18:15 (“It is elementary ancient law that an  
24 assignee never stands in any better position than his  
25 assignor....”) (citation omitted). Defendants are simply seeking  
26 a windfall or to punish Defendants’ exercise of First  
27 Amendment rights.

28 a. Element No. 2: That Plaintiff provided such license to use the Potato

1 Corner Intellectual Property as requested by Defendant PCJV.

2 i. This element is disputed.

3 ii. Nature of Dispute: Legal and Factual

4 iii. Plaintiff's Position Statement: this is a factual dispute.

5 iv. Defendants' Position Statement: Defendant disputes Element 2  
6 for the same reason they dispute Element 1.

7 v. Plaintiff's Supporting Evidence: Defendants have operated  
8 Potato Corner locations that utilize the Potato Corner  
9 Intellectual Property through what is, at best, a terminable at  
10 will, fully revocable license because Defendants were  
11 nonetheless operating Potato Corner locations, as if a written  
12 license existed. *See Pogrebnoy v. Russian Newspaper*  
13 *Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017),  
14 *aff'd*, 742 F. App'x 291 (9th Cir. 2018) ("[A]n implied license,  
15 like any other contract, is terminable at the will of either party if  
16 it is not for a specified term."). SPAVI has consented to that use  
17 until the termination of the license agreement on May 31, 2024;  
18 Trial Exhibit 29 (May 31, 2024 Termination); Testimony of  
19 Concepcion (Plaintiff's COO charged with US operations), Tan  
20 (Director responsible for international franchising), Magsaysay  
21 (Cinco's CEO), Koren; Emails and correspondence with SPAVI,  
22 Koren, and PCJV relating to negotiations of a licensing  
23 agreement for the use of the Potato Corner Intellectual Property;  
24 Amended Joint Venture Agreement; Franchise Agreements;  
25 FDDs

26 vi. Defendants' Supporting Evidence: Defendant relies upon the  
27 same record evidence to dispute both Elements 1 and 2

28 b. Element No. 3: That Defendant has not paid Plaintiff royalties or any

1 other compensation to Plaintiff for the use of the Potato Corner  
2 Intellectual Property

3 i. This element is disputed.

4 ii. Nature of Dispute: Legal and Factual

5 iii. Plaintiff's Position Statement: Plaintiff does not know  
6 what the issue is here.

7 iv. Defendants' Position Statement: Defendant disputes  
8 Element 3 for the same reason they dispute Element 1.

9 v. Plaintiff's Supporting Evidence: Financial statements  
10 produced by Defendants showing that there have been no  
11 royalty fees paid to SPAVI; Testimony of Koren, Plaintiff  
12 executives Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's  
13 COO charged with US operations), Tan (Director responsible  
14 for international franchising), Jose Magsaysay (Cinco's CEO)

15 vi. Defendants' Supporting Evidence: Defendant relies upon  
16 the same record evidence to dispute both Elements 1 and 2.

17 c. Element No. 4: The reasonable value for the use of the Potato Corner  
18 Intellectual Property that was provided.

19 i. This element is disputed.

20 ii. Nature of Dispute: Factual

21 v. Plaintiff's Supporting Evidence: Financial statements produced  
22 by Defendants showing that there have been no royalty fees paid  
23 to SPAVI; Testimony of Koren, Plaintiff executives Gregorio  
24 (Plaintiff's CEO), Concepcion (Plaintiff's COO charged with  
25 US operations), Tan (Director responsible for international  
26 franchising), Jose Magsaysay (Cinco's CEO); Notarized Deeds  
27 signed by seller and buyer; USPTO filings including  
28 Registrations and Assignments

1                   iii.     Defendants’ Supporting Evidence: The reasonable value  
2                   is nominal or \$1.00 because the 15-year track record is equal  
3                   payment of royalties and service fees (followed by and waiver in  
4                   favor of growth). See McCarthy, supra, § 18:15 (“It is  
5                   elementary ancient law that an assignee never stands in any  
6                   better position than his assignor....”) (citation omitted).

7  
8                   **4) Claim 10 (from FAC, Dkt. 65): Misappropriation of Trade Secrets**

9                   a. Element No. 1: That SPAVI owned the recipes, ingredients, and  
10                  ingredient allocations for its proprietary flavorings, the identities of its  
11                  suppliers, and other know-how, procedures, and processes used and  
12                  employed at Potato Corner outlets, including outlets owned and/or  
13                  operated by Defendants (“Potato Corner Trade Secrets”)

14                  i. This element is disputed.

15                  ii.     Nature of Dispute: Legal and Factual

16                  iii.    [If legal dispute] Plaintiff’s Position Statement: ]

17                  iv.     Defendants’ Position Statement: As a threshold matter, a  
18                  trade secret could only comprise “information, including a  
19                  formula, pattern, compilation, program, device, method,  
20                  technique, or process.” Cal. Civ. Code 3426.1(d). SPAVI has  
21                  not identified what “information” it claims Defendants  
22                  misappropriated. “Flavors” is not information, and packaging  
23                  is an object. Thus, SPAVI cannot carry its burden to “identify  
24                  the trade secrets and carry the burden of showing they exist.”  
25                  *InteliClear, LLC v. ETC Global Holdings, Inc.*, 978 F.3d 653,  
26                  658. A flavor is an idea and catch-all phrase, which is not  
27                  protected. *Id.*; *Silvaco Data Systems v. Intel Corp.*, 184 Cal.  
28                  App. 4th 210, 220 (2010). Moreover, the plaintiff must “own”

1 the trade secret—meaning the plaintiff either has title to the  
2 secret or has knowledge of the know how and licenses it with a  
3 confidentiality obligation. *See Sinclair v. Aquarius*  
4 *Electronics, Inc.*, 42 Cal.App.3d 216, 225-228 (1974) (trade  
5 secret licensing involves sharing sensitive, undisclosed  
6 information). A conclusory assignment from a prior reseller  
7 with no knowledge of the trade secret does not establish the  
8 required chain of title. *Memry Corp. v. Kentucky Oil*  
9 *Technology, N.V.*, No. C-04-03843 RMW, 2006 WL 3734384,  
10 at \*5 (N.D. Cal. 2006). Here, there is no evidence of the  
11 existence or ownership of trade secret information

12 v. Plaintiff's Supporting Evidence: SPAVI owns all  
13 trademarks, service marks, recipes, trade secrets, and other  
14 intellectual property affiliated with the Potato Corner brand.  
15 SPAVI acquired all of this intellectual property from the then-  
16 owners, Cinco Corporation ("Cinco"), in a deal that closed in  
17 2022. Additional evidence includes: Notarized Deeds signed  
18 by seller and buyer; USPTO filings including Registrations  
19 and Assignments, testimony of Gregorio (Plaintiff's CEO),  
20 Magsaysay (Cinco's CEO), Tan (Director responsible for  
21 international franchising),

22 vi. Defendants' Supporting Evidence: the following category,  
23 which is defined above, captures the key phase and supporting  
24 evidence: SPAVI Parties' Tortious Conduct. Among other  
25 things, Cinco Corporation's consent to reverse engineering of  
26 spices means that Plaintiff's predecessor did not know the  
27 alleged secret, did not own or have a trade secret license, and  
28 did not assign one to Plaintiff.

1 b. Element No. 2: That these Potato Corner Trade Secrets were a secret at  
2 the time of the misappropriation

3 i. This element is disputed

4 ii. Nature of Dispute: factual

5 iii. Plaintiff's Supporting Evidence: The Potato Corner brand  
6 is identifiable by its preparation of fries, which uses seven  
7 proprietary flavorings sold to SPAVI by one single supplier,  
8 the identity of which is confidential and not publicly known.  
9 The ingredients are not known outside the Potato Corner  
10 family, and the specific recipe (and proportions of each  
11 ingredient) are also kept secret. SPAVI maintains and benefits  
12 from the secrecy of the recipes and ingredient allocation of  
13 each flavoring and requires its supplier to protect that secrecy.  
14 The only persons with access to the flavoring packets  
15 delivered from the supplier (with ingredients listed but not  
16 quantities and proportions) are those bound by confidentiality  
17 and secrecy in favor. Anyone with access to the flavoring  
18 packages and ingredients is prohibited from using them for a  
19 purpose other than for the Potato Corner brand's benefit and  
20 may not misappropriate or take for themselves any of the  
21 proprietary information embodied in those packets. Additional  
22 evidence includes: The Franchise Disclosure Documents  
23 ("FDD"); agreements with the Franchisees; testimony of  
24 Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO),  
25 Ybanez (Plaintiff's General Counsel), Tan (Director  
26 responsible for international franchising), and Franchisees  
27 iv. Defendants' Supporting Evidence: supplier agreements;  
28 third-party Ferna's sale of spices to the public that SPAVI



1 contends are secret; Cinco Corporation's consent for reverse  
2 engineering of spices (meaning it did not know the alleged  
3 secret and thus did not have a trade secret license); and  
4 SPAVI's lack of evidence demonstrating it maintain secrecy,  
5 including but not limited to non-disclosure agreements,  
6 physically locked storage of product and recipes alleged to be  
7 trade secrets, use of two-factor authentication to access online  
8 storage of recipes alleged to be trade secrets, monitoring and  
9 securing of employees' and agents' communications and use  
10 technology to transfer data to third parties, such as by way of  
11 flash drives and cloud storage.

12 c. Element No. 3: That Defendants improperly acquired, used, or  
13 disclosed the Potato Corner Trade Secrets

14 i. This element is disputed

15 ii. Nature of Dispute: Legal and Factual

16 iii. Plaintiff's Position Statement:

17 iv. Defendants' Position Statement: By statute, reverse  
18 engineering is fair competition. It follows that, to establish  
19 wrongful acquisition, use or disclosure, Plaintiff must establish  
20 a legal duty in the acquisition of a product not to reverse  
21 engineer it. However, Plaintiff denies and cannot establish any  
22 legal duty between Plaintiff and Defendants as it affirmatively  
23 alleges they are not fiduciaries, it did not assume obligations  
24 and there is no privity of contract establishing any  
25 confidentiality obligation between them

26 v. Plaintiff's Supporting Evidence: Both the JVA and AJVA  
27 contain an agreement to agree on a Master License Agreement.  
28 However, there was never a written license agreement between

1 Plaintiff and Defendants. After SPAVI acquired the Potato  
2 Corner intellectual property rights, which included the Potato  
3 Corner Trade Secrets, SPAVI engaged in a good faith and  
4 exhaustive attempt to negotiate the terms of a written license  
5 with Defendants. Defendant Guy Koren engaged and  
6 participated in this negotiation, but was unwilling to agree to  
7 any minimally commercially viable licensing terms. Moreover,  
8 Guy Koren refused to, engage in reasonable and good faith  
9 negotiation. Instead, he only offered royalty rates and license  
10 fees that were more than 90% below what Koren had agreed to  
11 be reasonable licensing fees over a decade prior. Koren also  
12 repeatedly disengaged from the negotiation process, but still  
13 was utilizing the Potato Corner Intellectual Property.  
14 Therefore, SPAVI terminated the license agreement as of May  
15 31, 2024. After the termination, Defendants improperly,  
16 illegally, and unfairly misappropriated the flavoring packages  
17 in their possession, which should have been returned  
18 immediately following receipt of the May 31, 2024,  
19 Termination Letter, and transferred possession of those  
20 proprietary packages of flavorings to a third party for the  
21 purpose of reverse-engineering the flavorings directly from the  
22 packages themselves. Defendants also developed “Undercover  
23 Fries” to roll out the reverse engineered fries to compete with  
24 the Potato Corner brand while, at the same time, operating  
25 Potato Corner outlets and being in possession of the Potato  
26 Corner Intellectual Property, including the Potato Corner  
27 Trade Secrets. Additional evidence includes: Franchisee  
28 Photographs; Testimony from former franchisees, Concepcion

(Plaintiff's COO charged with US operations), Koren, investigator; the Franchise Agreements; FDDs; and leases, of PCJV over the years.

i. Defendants' Supporting Evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

d. Element No. 4: That SPAVI was harmed and/or Defendants were unjustly enriched by its use of the Potato Corner Trade Secrets

i. This element is disputed

ii. Nature of Dispute: Factual

iii. Plaintiff's Supporting Evidence: The secrecy of the Potato Corner Trade Secrets holds value to SPAVI. The reverse engineering was an unauthorized taking of a trade secret for Defendants own personal benefit to open a competing store "Undercover Fries". Additional evidence includes: Franchisee Photographs; Testimony from former franchisees, Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's COO charged with US operations), Ybanez (Plaintiff's General Counsel), Tan (Director responsible for international franchising), and Koren; the Franchise Agreements; FDDs; leases, of PCJV over the years; and financial statements of Defendants.

iv. Defendants' Supporting Evidence: Defendants incorporate their above factual positions

e. Element No. 5: Defendants acquisition, use, or disclosure of the Potato

1 Corner Trade Secrets was a substantial factor in causing Plaintiff's  
2 harm or for Defendants to be unjustly enriched.

3 i. This element is disputed

4 ii. Nature of Dispute: Factual

5 iii. Plaintiff's Supporting Evidence: Defendants'  
6 misappropriation, wrongful disclosure, and/or repudiation of  
7 the existence of SPAVI's above-described trade secrets and  
8 proprietary information, SPAVI has been damaged and  
9 continues to be damaged. Evidence includes: Defendants  
10 financials for the period in question May 31, 2024 through the  
11 present; testimony of Gregorio (Plaintiff's CEO), Ybanez  
12 (Plaintiff's General Counsel), Concepcion (Plaintiff's COO  
13 charged with US operations), Tan (Director responsible for  
14 international franchising), Koren, franchisees.

15 iv. Defendants' Supporting Evidence: Defendants  
16 incorporate their above factual positions

17 **I. Defendants' Affirmative Defenses to be Tried by a Jury**

18 **1) Affirmative Defense No. 1: Waiver (asserted by all Defendants as to**  
19 **all claims alleged by SPAVI against them)**

20 a. Element No. 1: Through implied and/or express conduct, SPAVI  
21 knowingly waived a valid right, privilege, advantage, or benefit  
22 allegedly conferred upon it and its attempt to enforce that right,  
23 privilege, advantage, or benefit is thus barred.

24 i. The parties dispute that this element is satisfied.

25 ii. Nature of Dispute: Factual and Legal

26 iii. Defendants' Position Statement: The specific rights or  
27 privileges that have been waived include the alleged right to  
28 terminate PCJV USA, LLC's right to use the U.S. Potato

1 Corner marks, and the alleged right to claim that the purchased  
2 seasoning packages were secret and improperly acquired.  
3 Plaintiff's enforcement waiver is based on Plaintiff and  
4 Plaintiff's predecessor's knowing acquiescence in PCVJ USA,  
5 LLC's use and quality control of Potato Corner in the United  
6 States, including before and after Plaintiff's alleged acquisition  
7 of the same. *See McCarthy, supra*, § 18:15 (“It is elementary  
8 ancient law that an assignee never stands in any better position  
9 than his assignor,’ thus once an assignee has notice of an  
10 injunction against the assignor, it is bound to comply.”)  
11 (citation omitted). Plaintiff's predecessor acquiesced for years  
12 in PCJV USA, LLC's use and quality contract. The fact of  
13 Plaintiff's due diligence, negotiations, and alleged transaction  
14 with Cinco Corporation before allegedly acquiring the U.S.  
15 trademarks put Plaintiff on actual notice of PCJV USA, LLC's  
16 use and control rights, and in response Plaintiff represented  
17 that it would be bound by any agreements related to the  
18 licensing of Potato Corner intellectual property in the United  
19 State, and thereafter did not attempt to enforce any alleged  
20 contrary right for years and then denied acquiring PCJV USA,  
21 LLC's use and quality control rights. As to the commercial  
22 sale of packaged seasonings, both Plaintiff and its predecessor  
23 have known for years that they did not own them, that they  
24 were publicly available for purchase in the market, and that it  
25 was not improper to reverse engineer them, and Plaintiff  
26 thereafter fulfilled an order and agreed to a fulfill a second  
27 order even after the alleged termination.

28 iv. Plaintiff's Position Statement: Defendants fail to identify any

1 specific right or privilege or benefit that was waived. The only  
2 relationship between SPAVI and any Defendant, was that of  
3 licensor to licensee, pursuant to an implied license. The only  
4 right that SPAVI possessed was to terminate or negotiate. It  
5 decision to wait to negotiate with Koren is not a waiver of  
6 its right to terminate. Ironically, it is SPAVI that is alleging  
7 that Defendants waived their right to claim the AJVA confers  
8 perpetual licensing rights, after negotiating the terms of a  
9 written license that would confer narrower rights for three  
10 years without once taking the position that it did not need a  
11 written license – a three year period during which much  
12 occurred in reliance on Koren's assent to the need for a  
13 written license.

14 v. Defendants' Supporting Evidence: The PCJV USA Parties  
15 intend to rely on testimony and also on a robust written  
16 evidentiary record which demonstrates the parties' mutual  
17 intentions and the evolution of their business relationship from  
18 the inception through the present. The following categories  
19 and chronology capture the key phases and supporting  
20 evidence: *1. Superseding Joint Venture (2008–2010)*,  
21 including (a) testimony and documentary evidence (i.e.,  
22 communications and the original NKM Master License  
23 Agreement) showing the parties' shared intent to bring Potato  
24 Corner to the U.S., (b) exhibits reflecting the transition from a  
25 simple license to a joint venture partnership in 2009-2010,  
26 including meeting minutes, correspondence, and planning  
27 documents from April/May 2010, (c) evidence of the July  
28 2010 formation of PCJV USA, LLC as the master franchisor

1 for all U.S. and Israel operations, with PCJV granted all rights  
2 to use and license the U.S. intellectual property (“Superseding  
3 Joint Venture (2008–2010)”); 2. *Alternative Licensing*  
4 *Arrangements and Ongoing Ratification (2011–2012)*,  
5 including (a) documents and communications (i.e., DLA Piper  
6 records, regulatory filings, and Franchise Disclosure  
7 Documents) evidencing the parties’ reliance on an alternative  
8 license agreement in 2011 for Cinco’s benefit, which was  
9 referenced and ratified in annual FDDs and other regulatory  
10 filings, (b) evidence of the 2012 Master Services Agreement,  
11 which authorized the LA Group to license the brand for an  
12 indefinite duration, further reflecting the parties’ mutual  
13 understanding and operational structure (“Alternative  
14 Licensing Arrangements and Ongoing Ratification (2011–  
15 2012)”); 3. *Formalization and Modification of the Joint*  
16 *Venture (2012)*, including (a) executed copies of the Joint  
17 Venture Agreement (JVA) and the LLC Operating Agreement  
18 from August 2012, memorializing the parties’ rights,  
19 obligations, and governance structure, (b) the First  
20 Amendment to the JVA (October 2012), with supporting  
21 meeting minutes, documenting specific modifications to the  
22 parties’ governance protocols only (“Formalization and  
23 Modification of the Joint Venture (2012)”); 4. *LA Group*  
24 *Partnership Agreement and Evolving Business Dynamics and*  
25 *Terms (2013–2018)*, including (a) the 2013 written partnership  
26 agreement entered into by the LA Group, reflecting further  
27 refinement of the parties’ roles and expectations, (b)  
28 communications, board minutes, and negotiation records from



1 2015–2018 detailing ongoing discussions about operational  
2 challenges, restructuring proposals (including Koren’s  
3 potential acquisition of Cinco shares or the LA Group’s  
4 acquisition of 100% of PCJV/PCI Trading), and a  
5 contemplated new Master License Agreement for Cinco’s  
6 benefit in exchange for 100% ownership in PCJV/PCI Trading  
7 (“LA Group Partnership Agreement and Evolving Business  
8 Dynamics and Terms (2013–2018)”); 5. *Dispute, Litigation,*  
9 *and State Court Proceedings (2018 and Beyond)*, including (a)  
10 evidence of the April 2018 board meeting and resolutions that  
11 precipitated the state court litigation, including verified  
12 pleadings, declarations, and court filings that set forth the  
13 parties’ mutual intentions and positions during the dispute,  
14 including also, if necessary, settlement negotiation discussions  
15 and the settlement and other agreements reached among the  
16 parties, (b) additional documents and testimony from the state  
17 court proceedings, including verified cross-complaints,  
18 declarations, and orders, which further clarify the parties’  
19 understanding and course of conduct (“Dispute, Litigation, and  
20 State Court Proceedings (2018 and Beyond)”); 6. *Ongoing*  
21 *Annual Ratification and Regulatory Compliance*, including  
22 FDDs, regulatory filings, and correspondence with state  
23 agencies, evidencing the parties’ continued mutual recognition  
24 of the licensing and franchising structure, as well as the  
25 ratification of their agreements and operational practices  
26 (“Ongoing Annual Ratification and Regulatory Compliance”);  
27 7. *SPAVI Parties’ Tortious Conduct*, including a  
28 comprehensive body of documents and testimony which

1 demonstrates the SPAVI parties' coordinated and wrongful  
2 actions aimed at appropriating the business operations, supply  
3 chain, and goodwill of the Potato Corner USA franchise  
4 system for their own benefit, such as (a) testimony and  
5 documentary evidence showing SPAVI's deliberate efforts to  
6 undermine and take over PCJV's established franchise  
7 network in the United States, (b) communications, internal  
8 memoranda, and correspondence reflecting SPAVI's outreach  
9 to PCJV franchisees, including direct offers of temporary  
10 licenses and inducements to sever ties with PCJV, as detailed  
11 in termination letters and related notices, (c) evidence of  
12 SPAVI's attempts to bypass PCJV's role as franchisor by  
13 negotiating directly with third-party franchisees, thereby  
14 disrupting existing contractual relationships and causing  
15 business uncertainty, (d) documents and witness statements  
16 establishing SPAVI's interference with PCI Trading's  
17 procurement and distribution of supplies, (e) testimony  
18 regarding SPAVI's refusal to supply powders to PCJV and its  
19 franchisees following the purported termination of the license,  
20 thereby jeopardizing ongoing operations and franchisee  
21 livelihoods, (f) evidence of SPAVI's efforts to control or  
22 redirect supplier relationships, including attempts to obtain  
23 confidential supplier information and to assert exclusive rights  
24 over the sourcing and distribution of Potato Corner products in  
25 the U.S., (g) testimony and exhibits documenting SPAVI's use  
26 of the established Potato Corner USA brand reputation and  
27 customer base to promote its own interests, including public  
28 statements, regulatory filings, and direct communications with

1 franchisees and suppliers, (h) rather than simply seeking  
2 declaratory relief, SPAVI's own conduct has interjected  
3 potential confusion in the marketplace, including the  
4 unauthorized use of trademarks, solicitation of franchisees, and  
5 dissemination of misleading information regarding the status  
6 of the franchise system and intellectual property rights, (i)  
7 documents showing SPAVI's attempts to claim ownership of  
8 the goodwill and business relationships cultivated by PCJV  
9 and PCI Trading over years of operation, despite the absence  
10 of any direct contractual relationship with many U.S.  
11 franchisees prior to the dispute, (j) evidence of the resulting  
12 harm to PCJV, PCI Trading, and the broader franchise  
13 network, including lost business opportunities, damaged  
14 supplier relationships, and erosion of brand value and goodwill  
15 ("SPAVI Parties' Tortious Conduct")..

16 vi. Plaintiff's Supporting Evidence: testimony of the negotiators  
17 from 2021 through 2024 including Mr. Gregorio and Mr. Tan  
18 (from SSPAVI), their correspondence with Koren and his  
19 testimony, the NKM License agreement and the JVA and  
20 AJVA (none of which SPAAVI is a party to or conferred  
21 rights that SPAVI is responsible for. The absence of  
22 contractual privity or otherwise is what disproves this  
23 affirmative defense.

24 b. Causes of Action Barred by this Affirmative Defense: all of SPAVI's  
25 causes of action

26 **2) Affirmative Defense No. 2: In Pari Delicto (asserted as to all of**  
27 **SPAVI's causes of action).**

28 a. Element No. 1: Plaintiff and Defendants have substantially equal

1 economic strength.

2 i. This element is not in dispute.

3 b. Element No. 2: Plaintiff is at least equally responsible for the harmful  
4 conduct as Defendants.

5 i. Disputed Status of Element 2: The parties dispute that this  
6 element is satisfied.

7 ii. Nature of Dispute: Legal and Factual

8 iii. Defendants' Position Statement: Defendants' elements precisely  
9 follow CACI No. 3431

10 iv. Plaintiff's Position Statement: the statement of these elements  
11 omit that to apply "in pari director" requires that SPPAVI have  
12 engaged in "illegal, fraudulent, or inequitable conduct," and  
13 that has never been alleged, nor is there any evidence of this.

14 v. Defendant's Supporting Evidence: the following category,  
15 which is defined above, captures the key phase and supporting  
16 evidence: SPAVI Parties' Tortious Conduct.

17 vi. Plaintiff's Supporting Evidence: testimony of the negotiators  
18 from 2021 through 2024 including Mr. Gregorio and Mr. Tan  
19 (from SSPAVI), their correspondence with Koren and his  
20 testimony, the NKM License agreement and the JVA and  
21 AJVA (none of which SPAAVI is a party to or conferred rights  
22 that SPAVI is responsible for. The absence of contractual  
23 privity or otherwise is what disproves this affirmative defense.

24 c. Element No. 3: Plaintiff was not held by economic pressure to engage  
25 in harmful conduct.

26 i. Disputed Status of Element 3: The parties dispute that this  
27 element is satisfied.

28 ii. Nature of Dispute: Legal and Factual.

- 1                   iii. Defendants’ Position Statement: Defendants’ elements precisely  
2                   follow CACI No. 3431.
- 3                   iv. Plaintiff’s Position Statement: the statement of these elements  
4                   omit that to apply “in pari dilecto” requires that SPPAVI have  
5                   engaged in “illegal, fraudulent, or inequitable conduct,” and  
6                   that has never been alleged, nor is there any evidence of this.
- 7                   v. Defendant’s Supporting Evidence: documents and testimony  
8                   including and related to (1) PCJV USA, LLC’s right to use  
9                   Potato Corner IP and quality control rights related thereto under  
10                  PCJV USA, LLC’s governing documents, including agreements  
11                  and related negotiations, franchise disclosure documents and  
12                  board minutes; (2) the parties’ course of conduct regarding  
13                  PCJV USA, LLC’s use and control of U.S. Potato Corner  
14                  trademarks; (3) the fact of SPAVI’s due diligence, negotiations,  
15                  and alleged acquisition of Cinco Corporation’s assets and  
16                  liabilities; (4) SPAVI’s denial of acquiring any IP rights or  
17                  obligations under PCJV’s governing documents; (5) SPAVI’s  
18                  statement that it would be bound by a settlement with Cinco; (6)  
19                  SPAVI’s knowing failure to do anything for years regarding  
20                  PCJV USA Parties’ full exercise of its right to use and quality  
21                  control; and (7) SPAVI’s decision to renege on a purchase order,  
22                  creating a short-term supply chain problem.
- 23                  vi. Plaintiff’s Supporting Evidence: testimony of the negotiators  
24                  from 2021 through 2024 including Mr. Gregorio and Mr. Tan  
25                  (from SSPAVI), their correspondence with Koren and his  
26                  testimony, the NKM License agreement and the JVA and  
27                  AJVA (none of which SPAAVI is a party to or conferred rights  
28                  that SPAVI is responsible for. The absence of contractual

privity or otherwise is what disproves this affirmative defense.

d. Causes of Action Barred by this Affirmative Defense: all of SPAVI's causes of action.

**3) Affirmative Defense No. 3: Statute of Limitations. (asserted as to all of SPAVI's causes of action)**

a. Element No. 1: SPAVI (either independently or as successor-in-interest to Cinco) knew, should have known, or had constructive notice of PCJV USA Parties' alleged infringing conduct over three years before SPAVI filed this action.

i. The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual

iii. Defendant's Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.

iv. Plaintiff's Supporting Evidence: Testimony off Mr. Gregorio (CEO of SPAVI) regarding termination of negotiations and sending the Termination Letter hours before this lawsuit was filed, such that, unless the statute of limitations is calculated by way of hours rather than years, this defense is an impossibility.

b. Causes of Action Barred by this Affirmative Defense: all of SPAVI's causes of action.

1 **4) Affirmative Defense No. 4: Abandonment through Assignment in Gross.**

2 a. Element No. 1: Cinco Corporation assigned U.S. Potato Corner  
3 trademarks to SPAVI without the goodwill associated with the  
4 trademarks.

5 i. The parties dispute that this element is satisfied.

6 ii. Nature of Dispute: Factual and Legal

7 iii. Defendants' Supporting Legal Position: Trademarks cannot be  
8 assigned or transferred apart from the goodwill of the business  
9 they represent. *See Federal Treasury Enterprise*  
10 *Sojuzplodoimport v. Spirits Intern. N.V.*, 623 F.3d 61, 68 (2d  
11 Cir. 2010); *Glow Industries, Inc. v. Lopez*, 273 F. Supp. 2d  
12 1095, 1108 (C.D. Cal. 2003); *Hallmark Hardwoods, Inv. V.*  
13 *Omni Wood Product, LLC*, 2011 WL 13176098, \*15 (C.D. Cal.  
14 2011); *In re Impact Distributors, Inc.*, 260 B.R. 48, 53-55 (S.D.  
15 Fla. 2001); *Money Store v. Harriscorp Fin., Inc.*, 689 F.2d 666,  
16 670 (7th Cir. 1982).

17 iv. Plaintiff's Supporting Legal Position: this is a factual dispute.  
18 Plaintiff argues that it did receive goodwill, while Defendants  
19 argue that we did not.

20 v. Defendants' Supporting Evidence: the following category,  
21 which is defined above, captures the key phase and supporting  
22 evidence: SPAVI Parties' Tortious Conduct.

23 vi. Plaintiff's Supporting Evidence: the deeds filed with the  
24 USPTO, proof of intent to continue using the marks,, including  
25 plans to expand rapidly within the US (testimony of SPAVI  
26 executives charged with this expansion, including Mr. Gregorio,  
27 Mr. Tann, and Mr. Concepcion, the COO.)  
28



1 b. Causes of Action Barred by this Affirmative Defense: SPAVI's causes  
2 of action for Trademark Infringement (15 U.S.C. § 1114), Trademark  
3 Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and  
4 Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark  
5 Infringement (15 U.S.C. § 1114), Contributory Trademark and False  
6 Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark  
7 Infringement, Declaratory Relief and Unfair Competition (Bus. &  
8 Prof. Code § 17200).

9 **5) Affirmative Defense No. 5: Abandonment through Naked Licensing.**

10 a. Element No. 1: SPAVI Parties (including Cinco's) alleged licensed use  
11 of U.S. Potato Corner trademarks to PCJV USA Parties.

12 i. This element is disputed.

13 ii. Nature of the dispute: Legal

14 iii. Defendants' Position Statement: Defendants assert both  
15 ownership and use rights arising from naked licensing, i.e.,  
16 authorization to use without adequate control. Ownership arises  
17 from Cinco Corporation's naked license because it barred the  
18 sale of any trademark rights to Plaintiff, and the PCJV USA  
19 Parties acquired all of Cinco Corporation's Interests and rights  
20 in Potato Corner in the United States in their settlement and  
21 MIPA. Ownership also arises from Plaintiff's naked licensing  
22 because PCJV USA, LLC is a senior user of the mark, including  
23 because Plaintiff never had any right to control Potato Corner in  
24 the United States, did not exercise control over Potato Corner in  
25 the United States, and had no grounds to believe PCJV USA,  
26 LLC would listen to or take any instruction from SPAVI.

27 iv. Plaintiff's Supporting Legal Position: the wording of this  
28 element, however, is going to be confusing to a jury. If it is

1 PCJV's position that it was not even a licensee as of May 31,  
2 2024, the damages calculation will change considerably.

3 b. Element No. 2: SPAVI Parties (including Cinco) did not exercise  
4 adequate control over PCJV USA Parties' use of U.S. Potato Corner  
5 trademarks.

6 i. The parties dispute that this element is satisfied.

7 ii. Nature of Dispute: Factual and Legal.

8 iii. Defendant's Supporting Legal Position:

9 iv. Plaintiff's Supporting Legal Position: First, this is an incorrect  
10 statement of the law, as the focus is less so on the use of the  
11 Marks, but more so on the nature and quality of the goods and/or  
12 services sold by the licensee. Second, though unsatisfying in its  
13 failure to conclusively resolve the debate, in the Ninth Circuit  
14 this defense likely requires a showing of clear and convincing  
15 evidence. FreecycleSunnyvale v. Freecycle Network, 626 F.3d  
16 509, 514 (9th Cir. 2010)

17 v. Defendants' Supporting Evidence: the following categories,  
18 which are defined above, capture the key phases and supporting  
19 evidence: Superseding Joint Venture (2008–2010), Alternative  
20 Licensing Arrangements and Ongoing Ratification (2011–2012),  
21 Formalization and Modification of the Joint Venture (2012), LA  
22 Group Partnership Agreement and Evolving Business Dynamics  
23 and Terms (2013–2018), Dispute, Litigation, and State Court  
24 Proceedings (2018 and Beyond), Ongoing Annual Ratification  
25 and Regulatory Compliance, and SPAVI Parties' Tortious  
26 Conduct

27 vi. Plaintiff's Supporting Evidence: Pursuant to the three  
28 considerations as to whether naked licensing has occurred, as

1 summarized in F19 Franchising, LLC v. Endo Fitness LL, LLC,  
2 No. 2:23-CV-00185-MEMF-JCX, 2023 WL 11950376, at \*6–9  
3 (C.D. Cal. July 28, 2023), this is the one issue for trial in which  
4 the prior action is actually relevant,, as it sets forth that efforts to  
5 exert control, as do the prior correspondence between Cinco and  
6 PCJV, and, moreover, the course of dealing prior to termination  
7 establishes the attempts to get control.

8 c. Causes of Action Barred by this Affirmative Defense: SPAVI’s causes  
9 of action for Trademark Infringement (15 U.S.C. § 1114), Trademark  
10 Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and  
11 Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark  
12 Infringement (15 U.S.C. § 1114), Contributory Trademark and False  
13 Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark  
14 Infringement, Declaratory Relief and Unfair Competition (Bus. &  
15 Prof. Code § 17200).

16 **6) Affirmative Defense No. 6: Senior Use.**

17 a. Element No. 1: Defendants were the first to use the U.S. Potato Corner  
18 trademarks in the United States.

19 i. The parties dispute that this element is satisfied.

20 ii. Nature of Dispute: Legal and factual.

21 iii. Defendant’s Legal Position Statement: “The first to use a mark  
22 in an area is deemed the ‘senior’ user and has the right to enjoin  
23 ‘junior users from using confusing similar marks in the same  
24 industry or market or within the senior user’s natural zone of  
25 expansion.” *Optimal Pets, Inc. v. Nutri-Vet, LLC*, 877 F. Supp.  
26 953, 959 (C.D. Cal. 2012).

27 iv. Plaintiff’s Legal Position Statement: See 15 USC § 1055. This  
28 argument is not made in good faith. It is also law of the case.

- v. Defendants' Supporting Evidence:
- vi. Plaintiff's Supporting Evidence: Registrations and testimony of Koren and Mr. Magsaysay
- b. Element No. 2: SPAVI intends to use the U.S. Potato Corner trademarks in the United States.
  - i. The parties dispute that this element is satisfied.
  - ii. Nature of Dispute: Legal and factual.
  - iii. Defendants' Legal Position Statement: "The first to use a mark in an area is deemed the 'senior' user and has the right to enjoin 'junior users from using confusing similar marks in the same industry or market or within the senior user's natural zone of expansion." *Optimal Pets, Inc. v. Nutri-Vet, LLC*, 877 F. Supp. 953, 959 (C.D. Cal. 2012).
  - iv. Plaintiff's Legal Position Statement: Unclear what the dispute is here other than factual.
  - v. Defendants' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond).
  - vi. Plaintiff's Supporting Evidence: Testimony of Gregorio, Tan, Concepcion, and Shaikh and Hussein
- c. Causes of Action Barred by this Affirmative Defense: SPAVI's causes of action for Trademark Infringement (15 U.S.C. § 1114), Trademark Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and

Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark Infringement (15 U.S.C. § 1114), Contributory Trademark and False Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark Infringement, Declaratory Relief and Unfair Competition (Bus. & Prof. Code § 17200).

**7) Affirmative Defense No. 7: Continuous Prior Use Within Remote Geographic Area.**

a. Element No. 1: Defendants continuously used the trademark, without interruption, in the U.S.

i. The parties dispute that this element is satisfied.

ii. Nature of Dispute: Legal and factual.

iii. Defendants' Supporting Legal Position: (1) PCJV USA, LLC's is the senior use under *Sengoku*, including actual first use (restructure in 2009) and lawful first use, *see CreAgri, Inc. v. USANA Health Services, Inc.*, 474 F3d 626, 630 (9th Cir. 2007); (2) but for a license agreement, which SPAVI Parties disavow, PCJV USA, LLC's use inured to its own benefit; (3) Cinco Corporation did not control PCJV USA, LLC's use of the Potato Corner marks; and (4) SPAVI Parties did not control PCJV USA, LLC's use of the Potato Corner marks.

iv. Plaintiff's Supporting Legal Position: See 15 USC §1055. This argument is not made in good faith.

v. Defendants' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics

1 and Terms (2013–2018), Dispute, Litigation, and State Court  
2 Proceedings (2018 and Beyond).

3 vi. Plaintiff’s Supporting Evidence: All evidence presented in  
4 Plaintiffs’ case in chief will prove the defense of this.

5 b. Element No. 2: Defendants began using the trademark without  
6 knowledge of SPAVI’s prior use elsewhere.

7 i. Disputed Status of Element 2: The parties dispute that this  
8 element is satisfied.

9 ii. Nature of Dispute: Factual.

10 iii. Defendants’ Supporting Evidence: the following categories,  
11 which are defined above, capture the key phases and supporting  
12 evidence: Superseding Joint Venture (2008–2010), Alternative  
13 Licensing Arrangements and Ongoing Ratification (2011–2012),  
14 Formalization and Modification of the Joint Venture (2012), LA  
15 Group Partnership Agreement and Evolving Business Dynamics  
16 and Terms (2013–2018), Dispute, Litigation, and State Court  
17 Proceedings (2018 and Beyond).

18 iv. Plaintiff’s Supporting Evidence: Koren testimony, registrations.

19 c. Element No. 3: Defendants used the trademark before SPAVI  
20 published the registered trademark.

21 i. Disputed Status of Element 3: The parties dispute that this  
22 element is satisfied.

23 ii. Nature of Dispute: factual.

24 iii. Defendants’ Supporting Evidence: the following categories,  
25 which are defined above, capture the key phases and supporting  
26 evidence: Superseding Joint Venture (2008–2010), Alternative  
27 Licensing Arrangements and Ongoing Ratification (2011–2012),  
28 Formalization and Modification of the Joint Venture (2012), LA

1 Group Partnership Agreement and Evolving Business Dynamics  
2 and Terms (2013–2018), Dispute, Litigation, and State Court  
3 Proceedings (2018 and Beyond).

4 iv. Plaintiff's Supporting Evidence: 15 USC § 1055. This argument  
5 is not made in good faith

6 d. Causes of Action Barred by this Affirmative Defense: SPAVI's causes  
7 of action for Trademark Infringement (15 U.S.C. § 1114), Trademark  
8 Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and  
9 Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark  
10 Infringement (15 U.S.C. § 1114), Contributory Trademark and False  
11 Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark  
12 Infringement, Declaratory Relief and Unfair Competition (Bus. &  
13 Prof. Code § 17200).

14 **8) Affirmative Defense No. 6: Mitigation.**

15 a. Element No. 1: SPAVI failed to use reasonable efforts to mitigate  
16 alleged damages.

17 i. The parties dispute that this element is satisfied.

18 ii. Nature of Dispute: Factual.

19 iii. Defendants' Supporting Evidence: the following category,  
20 which is defined above, captures the key phase and supporting  
21 evidence: SPAVI Parties' Tortious Conduct.

22 iv. Plaintiff's Supporting Evidence: Plaintiff looks forward to  
23 presenting the jury with every effort taken to get PCJV and  
24 Koren to either pay for or stop, finally, using this brand for  
25 which he has never paid to benefit from, whether that was  
26 negotiating a license, terminating the license or other attempts.

27 b. Element No. 2: the amount by which damages would have been  
28 mitigated.



- i. The parties dispute that this element is satisfied.
  - ii. Nature of Dispute: Factual.
  - iii. Defendants' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
  - iv. Plaintiff's Supporting Evidence: Testimony of Koren, Gregorio, Victor Tan, Financial documents.
- c. Causes of Action Barred by this Affirmative Defense: All of SPAVI Parties' causes of action (to the extent they seek damages).

**9) Affirmative Defense No. 9: Senior Use Trademark Ownership**

- a. Element No. 1: At the time of first lawful use, the partnership and JVA evidence co-ownership of the U.S. Potato Corner marks.
- i. Disputed Status of Element 1: The parties dispute that this element is satisfied.
  - ii. Nature of Dispute: Legal and factual.
  - iii. Defendants' Position Statement: The partnership and joint venture agreement between PCJV USA, LLC's LA Group and Cinco Group recognize and support per their terms and conditions that PCJV USA, LLC—the first actual, lawful, continuous and exclusive user of the U.S. Potato Corner marks—owns the U.S. Potato Corner marks (which was the LA Group's long-term security and consideration) at least until the parties executed the contemplated master license agreement (which was the Cinco Group's consideration) that they both agreed to enter into in accordance with their fiduciary and contractual obligations, but which still treated them as joint venture partners. *See Sengoku Works Ltd. v. RMC Int'l, Ltd.*, 96 F.3d 1217, 1219 (9th Cir. 1996); *cf. Precision Door Service, Inc.*

1 v. *Bell*, No. C 02–01108 CW, 2002 WL 655053, at \*6 (N.D. Cal  
2 April 18, 2002). Given that Plaintiff is disavowing the license  
3 agreement—meaning the factual basis upon which PCJV USA,  
4 LLC’s use might inure to Cinco Corporation’s benefit did not  
5 happen—the operative coownership agreements favor  
6 Defendants or, at minimum, are not dispositive as to ownership.  
7 Plaintiff does not get ownership by default because all exclusive  
8 users under *Sengoku* are alleged “related companies.” Under  
9 *Sengoku*, an alleged “related company” who is an exclusive user  
10 in the United States, gets to rebut that presumption, especially  
11 where, as here, the registrant filed an intent to use application  
12 that would only evidence senior use if the exclusive user’s first  
13 actual and lawful use inured to its benefit. Under the partnership  
14 and joint venture agreement, which “vested” in the joint venture  
15 and exclusive user complete licensing rights and obligations in  
16 the United States, approval of franchise agreements, including  
17 as disclosed in FDDs, restrictions on transfer, payment of equal  
18 royalties and service fees, and lifetime rights to license and  
19 quality control over Potato Corner in the United States, it plainly  
20 supports ownership in the joint venture or, at minimum, is not  
21 dispositive. The jury is entitled to consider the following five  
22 factors used in the Ninth Circuit to help determine ownership as  
23 between PCJV USA, LLC, an exclusive domestic user, and  
24 Plaintiff, an assignee of a foreign registrant, which plainly  
25 demonstrate that PCJV USA, LLC owns the U.S. marks unless  
26 and until there was a meeting of the minds on an enforceable  
27 license agreement: (1) which party invented and affixed the  
28 mark to the product; (2) which party’s name appeared with the

1 trademark; (3) which party maintained the product's quality and  
2 uniformity; (4) which party does the public identify with the  
3 product and make complaints to; and (5) which party possesses  
4 the goodwill associated with the product.

5 iv. Plaintiff's Position Statement: This misstates the Lanhan act and  
6 the rules of priority. *See Yagu. And Sengoku,*

7 v. Defendants' Supporting Evidence: documents and testimony  
8 including and related to (1) DLA Piper's notification of Cinco  
9 Corporation's unlawful use of Potato Corner in the United  
10 States; (2) the State of California's Department of Business  
11 Oversight's Order sanctioning PCJV USA, LLC for Cinco  
12 Corporation's alleged prior use of Potato Corner in the United  
13 States; (3) the superseding and restructure agreement between  
14 Guy Koren and Jose Magsaysay vesting ownership of Potato  
15 Corner in their partnership; (4) the joint venture agreement  
16 vesting co-ownership of Potato Corner in the United States in  
17 PCJV USA, LLC; (5) control over Potato Corner in the United  
18 States being vested with and exercised by PCJV USA, LLC; (6)  
19 Potato Corner USA being affixed to Potato Corner in the United  
20 States; (7) consumer association of Potato Corner in the United  
21 States with PCJV USA, LLC, to whom complaints, if any, were  
22 lodged; (8) PCJV USA, LLC's creation, development and hold  
23 over the goodwill of Potato Corner in the United States for over  
24 a decade; (9) Cinco's lack of control of Potato Corner in the  
25 United States for over a decade; (10) Plaintiff's lack of control  
26 of Potato Corner in the United States after it allegedly acquired  
27 the U.S. trademarks and before it registered additional Potato  
28

1 Corner trademarks; and (11) Plaintiff's suppression of evidence  
2 relevant to ownership.

3 vi. Plaintiff's Supporting Evidence: The registration and Koren's  
4 admissions regarding control

5 b. Element No. 2 (if Element No. 1 is not dispositive): The following  
6 factors demonstrate PCJV USA, LLC owns the U.S. Potato Corner  
7 Trademarks: (1) which party invented and affixed the mark to the  
8 product; (2) which party's name appeared with the trademark; (3)  
9 which party maintained the product's quality and uniformity; (4)  
10 which party does the public identify with the product and make  
11 complaints to; and (5) which party possesses the goodwill associated  
12 with the product.

13 i. Disputed Status of Element 3: The parties dispute that this  
14 element is satisfied.

15 ii. Nature of Dispute: Legal and factual.

16 iii. Defendants' Position Statement: Defendants incorporate the  
17 above legal position.

18 iv. Plaintiff's Position Statement: this is incomprehensible and not  
19 made in good faith.

20 v. Defendants' Supporting Evidence: Defendants incorporate the  
21 above legal position.

22 vi. Plaintiff's Supporting Evidence: this is incomprehensible and  
23 not made in good faith.

24 **II. Counterclaimants and Third Party Plaintiffs' ("PCJV USA Parties")**  
25 **Causes of Action to be Tried by a Jury**

26 **1) Cause of Action No. 2: Inducing Breach of Contract**

27 b. Element No. 1: there was a contract between any one of the PCJV  
28 USA Parties, on the one hand, and any one of the Cinco parties

1 (inclusive of the “Cinco Group” and “PCI Group”) or franchisees  
2 on the other hand.

3 i. Disputed Status of Element 1: The parties dispute this  
4 element is satisfied.

5 ii. Nature of Dispute: factual and legal

6 iii. PCJV USA Parties Legal Position Statement: The term for  
7 PCJV USA, LLC’s use of the U.S. Potato Corner trademarks  
8 “can be [i]mplied from the nature of the contract and  
9 circumstances surrounding it.” *See Consolidated Theatres,*  
10 *Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d  
11 713, 725 (1968). The “initial effort of the court, in  
12 construing contracts of continuing performance of  
13 forbearance which contain no express term of duration, must  
14 always be that of implying a term of duration commensurate  
15 with the intentions of the parties . . . .” *Id.* at 727. Only  
16 when “the nature of the contract and the totality of the  
17 surrounding circumstances give no suggestion as to any  
18 ascertainable term . . . , the obligations under the contract  
19 shall be terminable at will by any party upon reasonable  
20 notice after such a reasonable time has elapsed.” *Id.* Further,  
21 it is immaterial that SPAVI had full knowledge of the  
22 contracts’ terms. *See Jenni Rivera Enterprises, LLC v. Latin*  
23 *World Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766,  
24 783 (2019). Nor is SPAVI’s belief about the legal  
25 significance of facts or belief that the parties’ agreements are  
26 legally binding or has a different legal effect from what it is  
27 judicially held to have. *See Little v. Amber Hotel Co.*, 202  
28 Cal. App. 4th 280, 302 (2011).

1                   iv. Plaintiff's Position Statement: as drafted it is impossible to  
2                   know what the specific contract is that is at issue here. It has  
3                   never been disclosed, and still undisclosed. Rather than  
4                   jettison the claim or actually identify the contract, instead,  
5                   Defendants' solution is to fudge with obtuse language in the  
6                   jury instructions, designed to confuse everyone, including the  
7                   jury: "there was a contract between any one of the PCJV  
8                   Plaintiffs and any one of the Cinco parties." Indeed, the only  
9                   contract that Cinco has been a party to with any of these  
10                  Counterclaimants is the Settlement Agreement of the Prior  
11                  Governance Action. There is no other written agreement  
12                  between PCJV and Cinco, or between any other  
13                  Counterclaimant and Cinco.

14               v. PCJV USA Parties' Supporting Evidence: the following  
15               categories, which are defined above, capture the key phases  
16               and supporting evidence: Superseding Joint Venture (2008–  
17               2010), Alternative Licensing Arrangements and Ongoing  
18               Ratification (2011–2012), Formalization and Modification of  
19               the Joint Venture (2012), LA Group Partnership Agreement  
20               and Evolving Business Dynamics and Terms (2013–2018),  
21               Dispute, Litigation, and State Court Proceedings (2018 and  
22               Beyond), and Ongoing Annual Ratification and Regulatory  
23               Compliance.

24               vi. SPAVI and Cinco Parties' Supporting Evidence: Each of the  
25               agreements included in the trial exhibits and testimony of  
26               Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which  
27               will establish that none of the Counterclaimants – PCJV,  
28               PCIT, LA Group LLC, GK Capital, NKM, or Koren have

any contract to which Cinco has privity.

c. Element No. 2: SPAVI knew of the contract.

i. Disputed Status of Element 2: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. PCJV USA Parties Legal Position Statement: “the contract” refers to each and every applicable contract, including all written, oral, and/or implied-in-fact agreements between the “Cinco Group” and/or “PCI Group,” on the one hand, and Cross-Complainants PCJV, PCI Trading, LA Group, GK Capital, NKM, and Koren, on the other hand, inclusive of the JVA/AJVA, LLC Agreement, license agreements, MSA (as restated, amended, modified, or appended over time through PCJV meeting minutes, written communications of the PCJV Board, and/or representations made in FDDs); (2) the Settlement Documents between the “Koren Parties” and “Cinco Parties”; and (3) the franchise agreements PCJV entered with franchisees. Plaintiff’s position statement does not assert a legal argument

iv. SPAVI and Cinco’s Position Statement: as drafted it is impossible to know what the specific contract is at issue here. It has never been disclosed, and still undisclosed. So, when this element in the instructions says, “the contract,” whereas the prior element refers to some unidentified contract, as a matter of law, yes, this element is disputed. To the extent any actual contract ever existed between Cinco and these parties, the only one that is possible is the Settlement Agreement and corresponding agreement selling PCJV



equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco has never been a party to any other contract with any of the Counterclaim Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

v. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

vi. SPAVI and Cinco Parties' Supporting Evidence: Each of the agreements included in the trial exhibits and testimony of Mr. Gregorio, Mr. Tan, Ms. Victor, as well as Mr. Koren – all of which will establish that were aware of no contract between none of the Counterclaimants – PCJV, PCIT, LA Group LLC, GK Capital, NKM, or Koren have any contract to which Cinco has privity. After the fact, now, having been sued, SPAVI will unequivocally testify that it had knowledge of the terms off the settlement and never saw the document until this case commenced.

d. Element No. 3: SPAVI intended to cause any one of the Cinco parties or franchisees to breach the contract

i. Disputed Status of Element 3: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. PCJV USA Parties' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.

1                   iv. Plaintiff's Position Statement: as drafted it is impossible to  
2                   know what the specific contract is at issue here. It has never  
3                   been disclosed, and still undisclosed. So, when this element  
4                   in the instructions says, "the contract," whereas the prior  
5                   element refers to some unidentified contract, as a matter of  
6                   law, yes, this element is disputed. To the extent any actual  
7                   contract ever existed between Cinco and these parties, the  
8                   only one that is possible is the Settlement Agreement and  
9                   corresponding agreement selling PCJV equity to GKK  
10                  Capital. (Trial Exhibit 1176.) Because Cinco has never been  
11                  a party to any other contract with any of the Counterclaim  
12                  Defendants, that is the only one that could possibly be at  
13                  issue, but Defendants refuse to acknowledge this.

14               v. PCJV USA Parties' Supporting Evidence: the following  
15               category, which is defined above, captures the key phase and  
16               supporting evidence: SPAVI Parties' Tortious Conduct.

17               vi. SPAVI's Supporting Evidence: Each of the agreements  
18               included in the trial exhibits and testimony of Mr. Gregorio,  
19               Mr. Tan, Ms. Victor, as well as Mr. Koren – all of which  
20               will establish that they were not aware of and had no intent  
21               to cause anyone to breach any contract. Also, the  
22               correspondence leading up to the termination of the license –  
23               Trial Exhibits 20-31 – also confirm the intent was to  
24               negotiate a license with PCJV, something for which years  
25               were spent in pursuit, to no avail.

26               e. Element No. 4: SPAVI's conduct caused any one of the Cinco  
27               parties to breach the contract

28               i. Disputed Status of Element 4: The parties dispute this

1 element is satisfied.

2 ii. Nature of Dispute: factual and legal.

3 iii. PCJV USA Parties' Supporting Legal Position: The term for  
4 PCJV USA, LLC's use of the U.S. Potato Corner trademarks  
5 "can be [i]mplied from the nature of the contract and  
6 circumstances surrounding it." *See Consolidated Theatres,*  
7 *Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d  
8 713, 725 (1968). The "initial effort of the court, in  
9 construing contracts of continuing performance of  
10 forbearance which contain no express term of duration,  
11 must always be that of implying a term of duration  
12 commensurate with the intentions of the parties . . . ." *Id.* at  
13 727. Only when "the nature of the contract and the totality  
14 of the surrounding circumstances give no suggestion as to  
15 any ascertainable term . . . , the obligations under the contract  
16 shall be terminable at will by any party upon reasonable  
17 notice after such a reasonable time has elapsed." *Id.* Further,  
18 it is immaterial that SPAVI had full knowledge of the  
19 contracts' terms. *See Jenni Rivera Enterprises, LLC v. Latin*  
20 *World Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766,  
21 783 (2019). Nor is SPAVI's belief about the legal  
22 significance of facts or belief that the parties' agreements are  
23 legally binding or has a different legal effect from what it is  
24 judicially held to have. *See Little v. Amber Hotel Co.*, 202  
25 Cal. App. 4th 280, 302 (2011).

26 iv. Plaintiff's Position Statement: First, this presumes Cinco  
27 breached a contract. The only contracts that have been  
28 identified as being "breached" are the unsigned licensee

1 agreement and the AJVA. Neither document binds Cinco –  
2 indeed, that the AJVA constitutes an agreement to agree and  
3 not a contract has already been adjudicated and decided as  
4 law of the case. It is impossible to know what the specific  
5 contract is at issue here. To the extent any actual contract  
6 ever existed between Cinco and these parties, the only one  
7 that is possible is the Settlement Agreement and  
8 corresponding agreement selling PCJV equity to GKK  
9 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
10 a party to any other contract with any of the Counterclaim  
11 Defendants, that is the only one that could possibly be at  
12 issue, but Defendants refuse to acknowledge this.

13 v. PCJV USA Parties’ Supporting Evidence: the following  
14 categories, which are defined above, capture the key phases  
15 and supporting evidence: Superseding Joint Venture (2008–  
16 2010), Alternative Licensing Arrangements and Ongoing  
17 Ratification (2011–2012), Formalization and Modification of  
18 the Joint Venture (2012), LA Group Partnership Agreement  
19 and Evolving Business Dynamics and Terms (2013–2018),  
20 Dispute, Litigation, and State Court Proceedings (2018 and  
21 Beyond), Ongoing Annual Ratification and Regulatory  
22 Compliance, and SPAVI Parties’ Tortious Conduct.

23 vi. SPAVI Parties’ Supporting Evidence: The absence of  
24 evidence that Cinco was a party to, or breached, any  
25 contract with any of the Counterclaimants is the supporting  
26 evidence.

27 f. Element No. 5: any one of the PCJV USA Parties were harmed

28 i. Disputed Status of Element 4: The parties dispute this

1 element is satisfied.

2 ii. Nature of Dispute: factual and legal.

3 iii. PCJV USA Parties' Position Statement: Plaintiff's position  
4 statement does not address a legal issue concerning this  
5 element. To the extent Plaintiff's position statement  
6 addresses element 1, PCJV USA Parties incorporate their  
7 respective response here.

8 iv. Plaintiff's Position Statement: First, this presumes Cinco  
9 breached a contract. The only contracts that have been  
10 identified as being "breached" are the unsigned licensee  
11 agreement and the AJVA. Neither document binds Cinco –  
12 indeed, that the AJVA constitutes an agreement to agree and  
13 not a contract has already been adjudicated and decided as  
14 law of the case. It is impossible to know what the specific  
15 contract is at issue here. To the extent any actual contract  
16 ever existed between Cinco and these parties, the only one  
17 that is possible is the Settlement Agreement and  
18 corresponding agreement selling PCJV equity to GKK  
19 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
20 a party to any other contract with any of the Counterclaim  
21 Defendants, that is the only one that could possibly be at  
22 issue, but Defendants refuse to acknowledge this.

23 v. PCJV USA Parties' Supporting Evidence: the following  
24 category, which is defined above, captures the key phase and  
25 supporting evidence: SPAVI Parties' Tortious Conduct.

26 vi. SPAVI Parties' Supporting Evidence: The absence of  
27 evidence that Cinco was a party to, or breached, any  
28 contract with any of the Counterclaimants is the supporting

evidence, as there is no way any of the Counterclaimants could have been harmed.

g. Element No. 6: SPAVI's conduct was a substantial factor in causing harm to any of the Counterclaimants.

i. Disputed Status of Element 6: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. PCJV USA Parties' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here

iv. Plaintiff's Position Statement: Again, this presumes Cinco breached a contract. The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as law of the case. It is impossible to know what the specific contract is at issue here. To the extent any actual contract ever existed between Cinco and these parties, the only one that is possible is the Settlement Agreement and corresponding agreement selling PCJV equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco has never been a party to any other contract with any of the Counterclaim Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

v. PCJV USA Parties' Supporting Evidence: the following

categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties’ Tortious Conduct.

vi. SPAVI and Cinco’s Supporting Evidence: SPAVI’s only act that could have caused “harm” to any of the Counterclaimants is termination of the license, which it was permitted to do. The absence of evidence that Cinco was a party to, or breached, any contract with any of the Counterclaimants is the supporting evidence, as there is no way any of the Counterclaimants could have been harmed let alone as a result of any act by SPAVI.

**2) Cause of Action No. 3: Intentional Interference with Contractual Relations.**

- a. Element No. 1: there were various contracts, including contracts with the Cinco parties, franchisees, suppliers, and vendors,
- i. Disputed Status of Element 1: The parties dispute that this element is satisfied.
  - ii. Nature of Dispute: Legal and factual
  - iii. PCJV USA Parties’ Legal Position: The term for PCJV USA, LLC’s use of the U.S. Potato Corner trademarks “can be [i]mplied from the nature of the contract and circumstances surrounding it.” *See Consolidated Theatres, Inc. v. Theatrical*



1                   *Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The  
2                   “initial effort of the court, in construing contracts of continuing  
3                   performance of forbearance which contain no express term of  
4                   duration, must always be that of implying a term of duration  
5                   commensurate with the intentions of the parties . . . .” *Id.* at  
6                   727. Only when “the nature of the contract and the totality of  
7                   the surrounding circumstances give no suggestion as to any  
8                   ascertainable term . . . , the obligations under the contract shall  
9                   be terminable at will by any party upon reasonable notice after  
10                  such a reasonable time has elapsed.” *Id.* Further, it is  
11                  immaterial that SPAVI had full knowledge of the contracts’  
12                  terms. *See Jenni Rivera Enterprises, LLC v. Latin World*  
13                  *Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766, 783  
14                  (2019). Nor is SPAVI’s belief about the legal significance of  
15                  facts or belief that the parties’ agreements are legally binding  
16                  or has a different legal effect from what it is judicially held to  
17                  have. *See Little v. Amber Hotel Co.*, 202 Cal. App. 4th 280,  
18                  302 (2011).

19                  vii. Plaintiff’s Supporting Legal Position: The only contracts that  
20                  have been identified as being “breached” are the unsigned  
21                  licensee agreement and the AJVA. Neither document binds  
22                  Cinco – indeed, that the AJVA constitutes an agreement to  
23                  agree and not a contract has already been adjudicated and  
24                  decided as law of the case. It is impossible to know what the  
25                  specific contract is at issue here. To the extent any actual  
26                  contract ever existed between Cinco and these parties, the  
27                  only one that is possible is the Settlement Agreement and  
28                  corresponding agreement selling PCJV equity to GKK

Capital. (Trial Exhibit 1176.) Because Cinco has never been a party to any other contract with any of the Counterclaim Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

iv. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

v. SPAVI and Cinco's Supporting Evidence: the absence of evidence is enough. There are no such contracts

b. Element No. 2: SPAVI knew of the contracts.

i. Disputed Status of Element 2: The parties dispute that this element is satisfied.

i. Nature of Dispute: Factual.

ii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iii. Plaintiff's Supporting Evidence: the absence of evidence is enough. There are no such contracts.

c. Element No. 3: SPAVI's conduct prevented performance or made performance more expensive or difficult.

i. Disputed Status of Element 3: The parties dispute that this

1 element is satisfied.

2 ii. Nature of Dispute: Factual.

3 iii. PCJV USA Parties' Supporting Evidence: PCJV USA Parties'  
4 Supporting Evidence: the following categories, which are  
5 defined above, capture the key phases and supporting  
6 evidence: Superseding Joint Venture (2008–2010), Alternative  
7 Licensing Arrangements and Ongoing Ratification (2011–  
8 2012), Formalization and Modification of the Joint Venture  
9 (2012), LA Group Partnership Agreement and Evolving  
10 Business Dynamics and Terms (2013–2018), Dispute,  
11 Litigation, and State Court Proceedings (2018 and Beyond),  
12 Ongoing Annual Ratification and Regulatory Compliance, and  
13 SPAVI Parties' Tortious Conduct.

14 iv. SPAVI and Cinco's Supporting Evidence: the absence of  
15 evidence is enough. There are no such contracts

16 d. Element No. 4: SPAVI either (a) intended to disrupt the performance  
17 of these contracts or (b) knew that disruption of performance was  
18 certain or substantially certain to occur.

19 i. Disputed Status of Element 4: The parties dispute that this  
20 element is satisfied.

21 ii. Nature of Dispute: Factual.

22 iii. PCJV USA Parties' Supporting Evidence: the following  
23 category, which is defined above, captures the key phase and  
24 supporting evidence: SPAVI Parties' Tortious Conduct.

25 iv. SPAVI and Cinco's Supporting Evidence: the absence of  
26 evidence is enough. There are no such contracts

27 e. Element No. 5: any one of the PCJV USA Parties were harmed.

28 i. Disputed Status of Element 5: The parties dispute that this

1 element is satisfied.

2 ii. Nature of Dispute: Factual.

3 iii. PCJV USA Parties' Supporting Evidence:

4 iv. SPAVI Parties' Supporting Evidence: the absence of evidence  
5 is enough. There are no such contracts.

6 f. Element No. 6: SPAVI's conduct was a substantial factor in causing  
7 any one of the PCJV USA Parties' harm.

8 i. Disputed Status of Element 6: The parties dispute that this  
9 element is satisfied.

10 ii. Nature of Dispute: Factual.

11 iii. PCJV USA Parties' Supporting Evidence:

12 iv. SPAVI Parties' Supporting Evidence: the absence of evidence  
13 is enough. There are no such contracts

14 **3) Cause of Action No. 4: Interference with Prospective Economic**  
15 **Relations.**

16 a. Element No. 1: any one of the PCJV USA Parties were in various  
17 economic relations, including with Cinco parties, franchisees,  
18 suppliers, and venders were in that probably would have resulted in an  
19 economic benefit to Defendants.

20 i. Disputed Status of Element 1: The parties dispute that this  
21 element is satisfied.

22 ii. Nature of Dispute: Legal and factual.

23 iii. PCJV USA Parties' Supporting Legal Position: The term for  
24 PCJV USA, LLC's use of the U.S. Potato Corner trademarks  
25 "can be [i]mplied from the nature of the contract and  
26 circumstances surrounding it." *See Consolidated Theatres,*  
27 *Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713,  
28 725 (1968). The "initial effort of the court, in construing

1 contracts of continuing performance of forbearance which  
2 contain no express term of duration, must always be that of  
3 implying a term of duration commensurate with the intentions  
4 of the parties . . . .” *Id.* at 727. Only when “the nature of the  
5 contract and the totality of the surrounding circumstances give  
6 no suggestion as to any ascertainable term . . . , the obligations  
7 under the contract shall be terminable at will by any party  
8 upon reasonable notice after such a reasonable time has  
9 elapsed.” *Id.* Further, it is immaterial that SPAVI had full  
10 knowledge of the contracts’ terms. *See Jenni Rivera*  
11 *Enterprises, LLC v. Latin World Entertainment Holdings, Inc.*,  
12 36 Cal. App. 5th 766, 783 (2019). Nor is SPAVI’s belief about  
13 the legal significance of facts or belief that the parties’  
14 agreements are legally binding or has a different legal effect  
15 from what it is judicially held to have. *See Little v. Amber*  
16 *Hotel Co.*, 202 Cal. App. 4th 280, 302 (2011).

17 iv. Plaintiff’s Supporting Legal Position: the only relationships  
18 SPAVI knew about were with franchisees and certain vendors.  
19 the specific relationships at issue here have never been  
20 disclosed.

21 v. PCJV USA Parties’ Supporting Evidence: the following  
22 categories, which are defined above, capture the key phases  
23 and supporting evidence: Superseding Joint Venture (2008–  
24 2010), Alternative Licensing Arrangements and Ongoing  
25 Ratification (2011–2012), Formalization and Modification of  
26 the Joint Venture (2012), LA Group Partnership Agreement  
27 and Evolving Business Dynamics and Terms (2013–2018),  
28 Dispute, Litigation, and State Court Proceedings (2018 and

Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

vi. SPAVI's Supporting Evidence: testimony of executives.

b. Element No. 2: SPAVI knew of the relationships.

i. Disputed Status of Element 2: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI's Supporting Evidence: testimony of executives

c. Element No. 3: SPAVI engaged in conduct to destroy the value of any one of the PCJV USA Parties' relationships by usurping the benefits of those relationships for SPAVI's benefit.

i. Disputed Status of Element 3: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI's Supporting Evidence: Testimony of Tan and Concepcion and Victor and Shaikh and Hussein will all support SPAVI here.

d. Element No. 4: by engaging in this conduct, SPAVI either (a) intended to disrupt the relationships or (b) knew that disruption of the relationships was certain or substantially certain to occur.

i. Disputed Status of Element 4: The parties dispute that this element is satisfied.

- 1                   ii. Nature of Dispute: Factual.
- 2                   iii. PCJV USA Parties' Supporting Evidence: the following
- 3                         category, which is defined above, captures the key phase and
- 4                         supporting evidence: SPAVI Parties' Tortious Conduct.
- 5                   iv. SPAVI's Supporting Evidence: Tan and Concepcion and
- 6                         Victor and Shaikh and Hussein will all support SPAVI here.
- 7       e. Element No. 5: those relationships were disrupted.
- 8                   i. Disputed Status of Element 5: The parties dispute that this
- 9                         element is satisfied.
- 10                  ii. Nature of Dispute: Factual.
- 11                  iii. PCJV USA Parties' Supporting Evidence: the following
- 12                         categories, which are defined above, capture the key phases
- 13                         and supporting evidence: Superseding Joint Venture (2008–
- 14                         2010), Alternative Licensing Arrangements and Ongoing
- 15                         Ratification (2011–2012), Formalization and Modification of
- 16                         the Joint Venture (2012), LA Group Partnership Agreement
- 17                         and Evolving Business Dynamics and Terms (2013–2018),
- 18                         Dispute, Litigation, and State Court Proceedings (2018 and
- 19                         Beyond), Ongoing Annual Ratification and Regulatory
- 20                         Compliance, and SPAVI Parties' Tortious Conduct.
- 21                  iv. SPAVI Parties' Supporting Evidence: it is unknown what
- 22                         relationships were disrupted.
- 23       f. Element No. 6: any one of the PCJV USA Parties were harmed.
- 24                   i. Disputed Status of Element 6: The parties dispute that this
- 25                         element is satisfied.
- 26                   ii. Nature of Dispute: Factual.
- 27                   iii. PCJV USA Parties' Supporting Evidence: the following
- 28                         category, which is defined above, captures the key phase and



supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI Parties' Supporting Evidence: no proof of this has ever been established, particularly harm caused by any of the responding parties.

g. Element No. 7: SPAVI's conduct was a substantial factor in causing any one of the PCJV USA Parties' harm.

i. Disputed Status of Element 7: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI Parties' Supporting Evidence: no proof of this has ever been established, particularly harm caused by any of the responding parties.

#### **4) Cause of Action No. 5: Negligent Interference with Prospective Economic Advantage.**

a. Element No. 1: any one of the PCJV USA Parties were in various economic relations, including with Cinco parties, franchisees, suppliers, and venders that probably would have resulted in a future economic benefit to any one of the PCJV USA Parties.

i. Disputed Status of Element 1: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Legal and factual.

iii. PCJV USA Parties' Supporting Legal Position: The term for PCJV USA, LLC's use of the U.S. Potato Corner trademarks "can be [i]mplied from the nature of the contract and circumstances surrounding it." *See Consolidated Theatres,*

1 Inc. v. *Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713,  
2 725 (1968). The “initial effort of the court, in construing  
3 contracts of continuing performance of forbearance which  
4 contain no express term of duration, must always be that of  
5 implying a term of duration commensurate with the intentions  
6 of the parties . . . .” *Id.* at 727. Only when “the nature of the  
7 contract and the totality of the surrounding circumstances give  
8 no suggestion as to any ascertainable term . . . , the obligations  
9 under the contract shall be terminable at will by any party  
10 upon reasonable notice after such a reasonable time has  
11 elapsed.” *Id.* Further, it is immaterial that SPAVI had full  
12 knowledge of the contracts’ terms. *See Jenni Rivera*  
13 *Enterprises, LLC v. Latin World Entertainment Holdings, Inc.*,  
14 36 Cal. App. 5th 766, 783 (2019). Nor is SPAVI’s belief about  
15 the legal significance of facts or belief that the parties’  
16 agreements are legally binding or has a different legal effect  
17 from what it is judicially held to have. *See Little v. Amber*  
18 *Hotel Co.*, 202 Cal. App. 4th 280, 302 (2011).

19 vii. Plaintiff’s Supporting Legal Position: the only relationships  
20 SPAVI knew about were with franchisees and certain vendors.  
21 the specific relationships at issue here have never been  
22 disclosed.

23 iv. PCJV USA Parties’ Supporting Evidence: documents and  
24 testimony including and related to prospective supplier  
25 economic relationships and franchisee relations. the following  
26 categories, which are defined above, capture the key phases  
27 and supporting evidence: Superseding Joint Venture (2008–  
28 2010), Alternative Licensing Arrangements and Ongoing

1 Ratification (2011–2012), Formalization and Modification of  
2 the Joint Venture (2012), LA Group Partnership Agreement  
3 and Evolving Business Dynamics and Terms (2013–2018),  
4 Dispute, Litigation, and State Court Proceedings (2018 and  
5 Beyond), Ongoing Annual Ratification and Regulatory  
6 Compliance, and SPAVI Parties’ Tortious Conduct.

7 v. SPAVI’s Supporting Evidence: testimony of executives.

8 b. Element No. 2: SPAVI knew or should have known of these  
9 relationships.

10 i. Disputed Status of Element 2: The parties dispute that this  
11 element is satisfied.

12 ii. Nature of Dispute: Factual.

13 iii. PCJV USA Parties’ Supporting Evidence: the following  
14 category, which is defined above, captures the key phase and  
15 supporting evidence: SPAVI Parties’ Tortious Conduct.

16 iv. SPAVI Parties’ Supporting Evidence: testimony of executives

17 c. Element No. 3: SPAVI knew or should have known that these  
18 relationships would be disrupted if it failed to act with reasonable care.

19 i. Disputed Status of Element 3: The parties dispute that this  
20 element is satisfied.

21 ii. Nature of Dispute: Factual.

22 iii. PCJV USA Parties’ Supporting Evidence: the following  
23 category, which is defined above, captures the key phase and  
24 supporting evidence: SPAVI Parties’ Tortious Conduct.

25 iv. SPAVI’s Supporting Evidence: Testimony of Tan and  
26 Concepcion and Victor and Shaikh and Hussein will all  
27 support SPAVI here

28 d. Element No. 4: SPAVI failed to act with reasonable care.

- i. Disputed Status of Element 4: The parties dispute that this element is satisfied.
  - ii. Nature of Dispute: Factual.
  - iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
  - iv. SPAVI's Supporting Evidence: Tan and Concepcion and Victor and Shaikh and Hussein will all support SPAVI here
- e. Element No. 5: SPAVI engaged in wrongful conduct through engaging in conduct to destroy the value of any one of the PCJV USA Parties' relationships by usurping the benefits of those relationships for SPAVI's benefit.
- i. Disputed Status of Element 5: The parties dispute that this element is satisfied.
  - ii. Nature of Dispute: Factual.
  - iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.
  - iv. SPAVI Parties' Supporting Evidence: Tan and Concepcion and Victor and Shaikh and Hussein will all support SPAVI here

1 f. Element No. 6: the relationships were disrupted.

2 i. Disputed Status of Element 6: The parties dispute that this  
3 element is satisfied.

4 ii. Nature of Dispute: Factual.

5 iii. PCJV USA Parties' Supporting Evidence: the following  
6 category, which is defined above, captures the key phase and  
7 supporting evidence: SPAVI Parties' Tortious Conduct.

8 iv. SPAVI Parties' Supporting Evidence: SPAVI is unaware of  
9 what relationships were harmed.

10 g. Element No. 7: any one of the PCJV USA Parties were harmed.

11 i. Disputed Status of Element 7: The parties dispute that this  
12 element is satisfied.

13 ii. Nature of Dispute: Factual.

14 iii. PCJV USA Parties' Supporting Evidence: the following  
15 category, which is defined above, captures the key phase and  
16 supporting evidence: SPAVI Parties' Tortious Conduct.

17 i. SPAVI Parties' Supporting Evidence: no proof of this has ever  
18 been established, particularly harm caused by any of the  
19 responding parties

20 h. Element No. 8: SPAVI's wrongful conduct was a substantial factor in  
21 causing Defendants' harm.

22 i. Disputed Status of Element 8: The parties dispute that this  
23 element is satisfied.

24 ii. Nature of Dispute: Factual.

25 iii. PCJV USA Parties' Supporting Evidence: the following  
26 category, which is defined above, captures the key phase and  
27 supporting evidence: SPAVI Parties' Tortious Conduct.

28 iv. SPAVI's Supporting Evidence: no proof of this has ever been

1 established, particularly harm caused by any of the responding  
2 parties.

3 **5) Cause of Action No. 6: Aiding and Abetting Torts.**

4 a. Element No. 1: SPAVI knew that a breach of a fiduciary duty, breach  
5 of the implied covenant of good faith and fair dealing, fraud, or  
6 conversion was going to be committed by Cinco Corporation, its  
7 affiliates, or its agents against any one of the PCJV USA Parties.

8 i. Disputed Status of Element 1: The parties dispute that this  
9 element is satisfied.

10 ii. Nature of Dispute: Factual.

11 iii. PCJV USA Parties' Supporting Evidence: the following  
12 categories, which are defined above, capture the key phases  
13 and supporting evidence: Superseding Joint Venture (2008–  
14 2010), Alternative Licensing Arrangements and Ongoing  
15 Ratification (2011–2012), Formalization and Modification of  
16 the Joint Venture (2012), LA Group Partnership Agreement  
17 and Evolving Business Dynamics and Terms (2013–2018),  
18 Dispute, Litigation, and State Court Proceedings (2018 and  
19 Beyond), Ongoing Annual Ratification and Regulatory  
20 Compliance, and SPAVI Parties' Tortious Conduct

21 iv. SPAVI's Supporting Evidence: no torts have occurred so  
22 nothing could be aided or abetted.

23 b. Element No. 2: SPAVI gave substantial assistance or encouragement  
24 to Cinco Corporation, its affiliates, or its agents.

25 v. Disputed Status of Element 2: The parties dispute that this  
26 element is satisfied.

27 vi. Nature of Dispute: Factual.

28 vii. PCJV USA Parties' Supporting Evidence: the following

category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

viii. SPAVI's Supporting Evidence: no torts have occurred so nothing could be aided or abetted.

c. Element No. 3: Cinco Corporation's, its affiliates, or its agents' conduct was a substantial factor in causing harm to any one of the PCJV USA Parties.

ix. Disputed Status of Element 3: The parties dispute that this element is satisfied.

x. Nature of Dispute: Factual.

xi. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

xii. SPAVI's Supporting Evidence: no torts have occurred so nothing could be aided or abetted.

**6) Cause of Action No. 7: First Count of Breach of Fiduciary Duty.**

a. Element No. 1: either Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, was a joint venture partner of PCJV.

i. Disputed Status of Element 1: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence:

iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

b. Element No. 2: Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, acted on PCJV's behalf for purposes of



1 providing PCJV with an exclusive right to use the Potato Corner  
2 trademark in the United States.

- 3 i. Disputed Status of Element 2: The parties dispute that this  
4 element is satisfied.
- 5 ii. Nature of Dispute: Factual
- 6 iii. PCJV USA Parties' Supporting Evidence: the following  
7 categories, which are defined above, capture the key phases  
8 and supporting evidence: Superseding Joint Venture (2008–  
9 2010), Alternative Licensing Arrangements and Ongoing  
10 Ratification (2011–2012), Formalization and Modification of  
11 the Joint Venture (2012), LA Group Partnership Agreement  
12 and Evolving Business Dynamics and Terms (2013–2018),  
13 Dispute, Litigation, and State Court Proceedings (2018 and  
14 Beyond), Ongoing Annual Ratification and Regulatory  
15 Compliance, and SPAVI Parties' Tortious Conduct
- 16 iv. SPAVI and Cinco's Supporting Evidence: the absence of  
17 evidence will suffice. Also, no evidence that SPAVI is a  
18 successor in interest or took on this liability
- 19 c. Element No. 3: Cinco Corporation or SPAVI, as Cinco Corporation's  
20 successor-in-interest, failed to act as a reasonably careful partner  
21 would have acted under the same or similar circumstances.
  - 22 i. Disputed Status of Element 3: The parties dispute that this  
23 element is satisfied.
  - 24 ii. Nature of Dispute: Factual
  - 25 iii. PCJV USA Parties' Supporting Evidence: the following  
26 categories, which are defined above, capture the key phases  
27 and supporting evidence: Superseding Joint Venture (2008–  
28 2010), Alternative Licensing Arrangements and Ongoing

1 Ratification (2011–2012), Formalization and Modification of  
2 the Joint Venture (2012), LA Group Partnership Agreement  
3 and Evolving Business Dynamics and Terms (2013–2018),  
4 Dispute, Litigation, and State Court Proceedings (2018 and  
5 Beyond), Ongoing Annual Ratification and Regulatory  
6 Compliance, and SPAVI Parties’ Tortious Conduct

7 iv. SPAVI and Cinco’s Supporting Evidence: the absence of  
8 evidence of a duty will suffice. Also, no evidence that SPAVI  
9 is a successor in interest or took on this liability

10 d. Element No. 4: any one of the PCJV USA Parties were harmed.

11 i. Disputed Status of Element 4: The parties dispute that this  
12 element is satisfied.

13 ii. Nature of Dispute: factual

14 iii. PCJV USA Parties’ Supporting Evidence: the following  
15 category, which is defined above, captures the key phase and  
16 supporting evidence: SPAVI Parties’ Tortious Conduct.

17 iv. SPAVI and Cinco’s Supporting Evidence: the absence of  
18 evidence of a duty will suffice. Also, no evidence that SPAVI  
19 is a successor in interest or took on this liability

20 e. Element No. 5: the conduct of Cinco Corporation or SPAVI, as Cinco  
21 Corporation’s successor-in-interest, was a substantial factor in causing  
22 any one of the PCJV USA Parties’ harm.

23 i. Disputed Status of Element 5: The parties dispute that this  
24 element is satisfied.

25 ii. Nature of Dispute: factual

26 iii. PCJV USA Parties’ Supporting Evidence: the following  
27 category, which is defined above, captures the key phase and  
28 supporting evidence: SPAVI Parties’ Tortious Conduct

- iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

**7) Cause of Action No. 7: Second Count of Breach of Fiduciary Duty.**

- a. Element No. 1: Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, was a joint venture partner of PCJV.

- i. Disputed Status of Element 1: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: factual
- iii. PCJV USA Parties' Supporting Evidence: [insert]
- iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

- b. Element No. 2: Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, knowingly acted against interests of PCJV and PCJV's other joint venture partners in connection with providing PCJV with an exclusive right to use the Potato Corner trademark in the United States.

- i. Disputed Status of Element 2: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual
- iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018),

Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct

iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

c. Element No. 3: any one of the PCJV USA Parties did not give informed consent to the conduct of Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest.

i. Disputed Status of Element 3: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual

iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.

iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

d. Element No. 4: any one of the PCJV USA Parties were harmed,

i. Disputed Status of Element 4: The parties dispute that this element is satisfied.

- ii. Nature of Dispute: Factual.
  - iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
  - iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability
- e. Element No. 5: the conduct of Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, was a substantial factor in causing any one of the PCJV USA Parties' harm.
- i. Disputed Status of Element 5: The parties dispute that this element is satisfied.
  - ii. Nature of Dispute: factual
  - iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct
  - iv. SPAVI and Cinco's Supporting Evidence: the absence of evidence of a duty will suffice. Also, no evidence that SPAVI is a successor in interest or took on this liability

**8) Cause of Action No. 7: Breach of Contract.**

- a. Element No. 1: there is a contract between PCJV and Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest.
- i. Disputed Status of Element 1: The parties dispute this element is satisfied.
  - ii. Nature of Dispute: factual and legal
  - iii. PCJV USA Parties' Position Statement: The term for PCJV USA, LLC's use of the U.S. Potato Corner trademarks "can be [i]mplied from the nature of the contract and

1 circumstances surrounding it.” *See Consolidated Theatres,*  
2 *Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d  
3 713, 725 (1968). The “initial effort of the court, in construing  
4 contracts of continuing performance of forbearance which  
5 contain no express term of duration, must always be that of  
6 implying a term of duration commensurate with the  
7 intentions of the parties . . . .” *Id.* at 727. Only when “the  
8 nature of the contract and the totality of the surrounding  
9 circumstances give no suggestion as to any ascertainable  
10 term . . . , the obligations under the contract shall be  
11 terminable at will by any party upon reasonable notice after  
12 such a reasonable time has elapsed.” *Id.* Further, it is  
13 immaterial that SPAVI had full knowledge of the contracts’  
14 terms. *See Jenni Rivera Enterprises, LLC v. Latin World*  
15 *Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766, 783  
16 (2019). Nor is SPAVI’s belief about the legal significance of  
17 facts or belief that the parties’ agreements are legally binding  
18 or has a different legal effect from what it is judicially held to  
19 have. *See Little v. Amber Hotel Co.*, 202 Cal. App. 4th 280,  
20 302 (2011)

21 iv. Plaintiff’s Position Statement: as drafted it is impossible to  
22 know what the specific contract is that is at issue here. It has  
23 never been disclosed, and still undisclosed. Rather than  
24 jettison the claim or actually identify the contract, instead,  
25 Defendants’ solution is to fudge with obtuse language in the  
26 jury instructions, designed to confuse everyone, including the  
27 jury: “there was a contract between any one of the PCJV  
28 Plaintiffs and any one of the Cinco parties.” Indeed, the only

1 contract that Cinco has been a party to with any of these  
2 Counterclaimants is the Settlement Agreement of the Prior  
3 Governance Action. There is no other written agreement  
4 between PCJV and Cinco, or between any other  
5 Counterclaimant and Cinco. It is possible that  
6 Counterclaimants are seeking to allege that Cinco is an alter  
7 ego of Potato Corner International or others, however,  
8 PCJV and the other counterclaimants already alleged this --  
9 alter ego status of Cinco -- and after a negotiated  
10 settlement, dismissed this claim with prejudice. They may  
11 not raise it now. *See, e.g., Torrey Pines Bank v. Superior Ct.*,  
12 216 Cal. App. 3d 813, 820 (Ct. App. 1989) (holding that “a  
13 dismissal with prejudice is the maiden name for a common  
14 law retraxit,” and “[a] retraxit is equivalent to a judgment on  
15 the merits and as such bars further litigation on the same  
16 subject matter between the parties.”); *Datta v. Staab*, 173  
17 Cal. App. 2d 613, 620—21 (1959) (“The effect of a dismissal  
18 with prejudice is quite different, however, when it is  
19 executed and filed in return for a consideration moving from  
20 the defendant. Such a dismissal operates as a complete bar to  
21 any future action and has the same legal effect as a common  
22 law petraxit.”).

23 v. Defendants’ Supporting Evidence: the following categories,  
24 which are defined above, capture the key phases and  
25 supporting evidence: Superseding Joint Venture (2008–  
26 2010), Alternative Licensing Arrangements and Ongoing  
27 Ratification (2011–2012), Formalization and Modification of  
28 the Joint Venture (2012), LA Group Partnership Agreement



1 and Evolving Business Dynamics and Terms (2013–2018),  
2 Dispute, Litigation, and State Court Proceedings (2018 and  
3 Beyond), and Ongoing Annual Ratification and Regulatory  
4 Compliance.

5 vi. SPAVI Parties’ Supporting Evidence: Each of the  
6 agreements included in the trial exhibits and testimony of  
7 Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which  
8 will establish that none of the Counterclaimants – PCJV,  
9 PCIT, LA Group LLC, GK Capital, NKM, or Koren have  
10 any contract to which Cinco has privity; the settlement  
11 agreement (Trial Exhibit 1172) and evidence of the  
12 dismissals with prejudice, as well as the pleadings in the  
13 prior case establishing what has been dismissed, and subject  
14 to retraxit.

15 b. Element No. 2: PCJV USA Parties did all or substantially all of the  
16 things required under the contract, or were excused from so  
17 performing:

18 i. Disputed Status of Element 2: The parties dispute this  
19 element is satisfied.

20 ii. Nature of Dispute: factual and legal.

21 iii. PCJV USA Parties’ Position Statement: Plaintiff’s position  
22 statement does not address a legal issue concerning this  
23 element. To the extent Plaintiff’s position statement  
24 addresses element 1, PCJV USA Parties incorporate their  
25 respective response here

26 iv. Plaintiff’s Position Statement: as drafted it is impossible to  
27 know what the specific contract is at issue here. It has never  
28 been disclosed, and still undisclosed. So, when this element

1 in the instructions says, “the contract,” whereas the prior  
2 element refers to some unidentified contract, as a matter of  
3 law, yes, this element is disputed. To the extent any actual  
4 contract ever existed between Cinco and these parties, the  
5 only one that is possible is the Settlement Agreement and  
6 corresponding agreement selling PCJV equity to GKK  
7 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
8 a party to any other contract with any of the Counterclaim  
9 Defendants, that is the only one that could possibly be at  
10 issue, but Defendants refuse to acknowledge this. It is  
11 possible that Counterclaimants are seeking to allege that  
12 Cinco is an alter ego of Potato Corner International or  
13 others, however, PCJV and the other counterclaimants  
14 already alleged this -- alter ego status of Cinco -- and after  
15 a negotiated settlement, dismissed this claim with prejudice.  
16 They may not raise it now. *See, e.g., Torrey Pines Bank v.*  
17 *Superior Ct.*, 216 Cal. App. 3d 813, 820 (Ct. App. 1989)  
18 (holding that “a dismissal with prejudice is the maiden name  
19 fir a common law retraxit,” and “[a] retraxit is equivalent to a  
20 judgment on the merits and as such bars further litigation on  
21 the same subject matter between the parties.”); *Datta v.*  
22 *Staab*, 173 Cal. App. 2d 613, 620—21 (1959) (“The effect of  
23 a dismissal with prejudice is quite different, however, when  
24 it is executed and filed in return for a consideration moving  
25 from the defendant. Such a dismissal operates as a complete  
26 bar to any future action and has the same legal effect as a  
27 common law petraxit.”) (internal

28 v. PCJV USA Parties’ Supporting Evidence: the following

categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

vi. SPAVI Parties’ Supporting Evidence: Each of the agreements included in the trial exhibits and testimony of Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which will establish that none of the Counterclaimants – PCJV, PCIT, LA Group LLC, GK Capital, NKM, or Koren have any contract to which Cinco has privity; the settlement agreement (Trial Exhibit 1172) and evidence of the dismissals with prejudice, as well as the pleadings in the prior case establishing what has been dismissed, and subject to retraxit..

c. Element No. 3: Cinco Corporation or SPAVI, as Cinco Corporation’s successor-in-interest, breached the contract

- i. Disputed Status of Element 3: The parties dispute this element is satisfied.
- ii. Nature of Dispute: factual and legal.
- iii. PCJV USA Parties’ Position Statement: SPAVI intended to cause the breach of the above listed contracts by: (1) allegedly acquiring IP rights from Cinco (which SPAVI claims include US IP rights), without LA

1 Group's/Koren's/PCJV's prior written consent in violation of  
2 the JVA/AJVA/LLC Agreement; (2) failing to allegedly  
3 acquire the associated obligations and burdens under those  
4 agreements to, for example, acknowledge our use and  
5 termination rights, make best efforts to cooperate for the  
6 success of PCJV, to perform further acts (such as execute  
7 and deliver all required documents), if necessary, to provide  
8 us use rights, or to, at minimum, acknowledge that PCJV  
9 maintains a 50-year license or at least may continue to use  
10 for as long as necessary under the franchise agreements it  
11 was authorized to sign with franchisees in violation of the  
12 JVA/AJVA/LLC Agreement/license agreements/MSA (and  
13 associated written, oral, implied-in-fact  
14 agreements/modifications, such as meeting minutes, written  
15 communications of the PCJV members/managers, FDDs);  
16 (3) refusing to acknowledge PCJV's right to reverse engineer  
17 the powders/spices in violation of the PCJV board meeting  
18 minutes; (4) refusing to acknowledge PCJV's affiliated  
19 Koren stores' right not to pay royalties in accordance with  
20 the JVA/AJVA/LLC Agreement; (5) refusing to  
21 acknowledge LA Group's and Cinco Group/PCI Group's  
22 mutual waiver of royalties as to all other initial/franchise fees  
23 or other royalty income actually collected or to be collected  
24 by PCJV in accordance with the JVA/AJVA/LLC  
25 Agreement/FDDs; (6) refusing to honor the settlement struck  
26 with Cinco whereby Koren/GK acquired all interests and  
27 attached interests (despite representing that it would); and (7)  
28 causing certain PCJV franchisees to breach their franchise

1 agreements and associate themselves with SPAVI.

2 iv. Plaintiff's Position Statement: The only contracts that have  
3 been identified as being "breached" are the unsigned licensee  
4 agreement and the AJVA. Neither document binds Cinco –  
5 indeed, that the AJVA constitutes an agreement to agree and  
6 not a contract has already been adjudicated and decided as  
7 law of the case. It is impossible to know what the specific  
8 contract is at issue here. To the extent any actual contract  
9 ever existed between Cinco and these parties, the only one  
10 that is possible is the Settlement Agreement and  
11 corresponding agreement selling PCJV equity to GKK  
12 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
13 a party to any other contract with any of the Counterclaim  
14 Defendants, that is the only one that could possibly be at  
15 issue, but Defendants refuse to acknowledge this.

16 v. PCJV USA Parties' Supporting Evidence: the following  
17 categories, which are defined above, capture the key phases  
18 and supporting evidence: Superseding Joint Venture (2008–  
19 2010), Alternative Licensing Arrangements and Ongoing  
20 Ratification (2011–2012), Formalization and Modification of  
21 the Joint Venture (2012), LA Group Partnership Agreement  
22 and Evolving Business Dynamics and Terms (2013–2018),  
23 Dispute, Litigation, and State Court Proceedings (2018 and  
24 Beyond), Ongoing Annual Ratification and Regulatory  
25 Compliance, and SPAVI Parties' Tortious Conduct.

26 vi. SPAVI Parties' Supporting Evidence: The absence of  
27 evidence that Cinco was a party to, or breached, any  
28 contract with any of the Counterclaimants is the supporting

evidence.

d. Element No. 4: PCJV USA Parties were harmed.

i. Disputed Status of Element 4: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. Defendants' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.

iv. Plaintiff's Position Statement: Cinco breached no contract. The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as law of the case. It is impossible to know what the specific contract is at issue here. To the extent any actual contract ever existed between Cinco and these parties, the only one that is possible is the Settlement Agreement and corresponding agreement selling PCJV equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco has never been a party to any other contract with any of the Counterclaim Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

v. Defendants' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

vi. SPAVI Parties' Supporting Evidence: The absence of evidence that Cinco was a party to, or breached, any contract with any of the Counterclaimants is the supporting evidence, as there is no way any of the Counterclaimants could have been harmed.

9) **Cause of Action No. 9: Breach of Covenant of Good Faith and Fair Dealing.**

e. Element No. 1: there is a contract between a Counterclaimant and Cinco Corporation / that SPAVI is a successor in interest to a contract with Cinco.

i. Disputed Status of Element 1: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal

iii. PCJV USA Parties' Position Statement: The term for PCJV USA, LLC's use of the U.S. Potato Corner trademarks "can be [i]mplied from the nature of the contract and circumstances surrounding it." *See Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The "initial effort of the court, in construing contracts of continuing performance of forbearance which contain no express term of duration, must always be that of implying a term of duration commensurate with the intentions of the parties . . . ." *Id.* at 727. Only when "the nature of the contract and the totality of the surrounding circumstances give no suggestion as to any ascertainable term . . . , the obligations under the contract shall be terminable at will by any party upon reasonable notice after such a reasonable time has elapsed." *Id.* Further, it is



1 immaterial that SPAVI had full knowledge of the contracts’  
2 terms. *See Jenni Rivera Enterprises, LLC v. Latin World*  
3 *Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766, 783  
4 (2019). Nor is SPAVI’s belief about the legal significance of  
5 facts or belief that the parties’ agreements are legally binding  
6 or has a different legal effect from what it is judicially held to  
7 have. *See Little v. Amber Hotel Co.*, 202 Cal. App. 4th 280,  
8 302 (2011).

9 iv. Plaintiff’s Position Statement: Moreover, and again, as  
10 drafted it is impossible to know what the specific contract is  
11 that is at issue here. It has never been disclosed, and still  
12 undisclosed. Rather than jettison the claim or actually  
13 identify the contract, instead, Defendants’ solution is to  
14 fudge with obtuse language in the jury instructions, designed  
15 to confuse everyone, including the jury: “there was a contract  
16 between any one of the PCJV Plaintiffs and any one of the  
17 Cinco parties.” Indeed, the only contract that Cinco has been  
18 a party to with any of these Counterclaimants is the  
19 Settlement Agreement of the Prior Governance Action. There  
20 is no other written agreement between PCJV and Cinco, or  
21 between any other Counterclaimant and Cinco. It is possible  
22 that Counterclaimants are seeking to allege that Cinco is an  
23 alter ego of Potato Corner International or others, however,  
24 PCJV and the other counterclaimants already alleged this --  
25 alter ego status of Cinco -- and after a negotiated  
26 settlement, dismissed this claim with prejudice. They may  
27 not raise it now. *See, e.g., Torrey Pines Bank v. Superior Ct.*,  
28 216 Cal. App. 3d 813, 820 (Ct. App. 1989) (holding that “a

1 dismissal with prejudice is the maiden name for a common  
2 law retraxit,” and “[a] retraxit is equivalent to a judgment on  
3 the merits and as such bars further litigation on the same  
4 subject matter between the parties.”); *Datta v. Staab*, 173  
5 Cal. App. 2d 613, 620—21 (1959) (“The effect of a dismissal  
6 with prejudice is quite different, however, when it is  
7 executed and filed in return for a consideration moving from  
8 the defendant. Such a dismissal operates as a complete bar to  
9 any future action and has the same legal effect as a common  
10 law petraxit.”). Second, as for SPAVI, it purchased  
11 intellectual property, and did not assume any contracts  
12 binding Cinco. Thus, the claim that SPAVI is bound to good  
13 faith and fair dealing as a “successor in interest has no basis”  
14 and can be resolved a matter of law,, given that this simply  
15 requires interpretation of contracts binding Cinco (of which  
16 there are no one) to which SPAVI assumed (also, null set).  
17 Put simply – S{PAVI is not a successor in interest to any  
18 contract of Cinco, and by purchasing the intellectual property  
19 of Cinco, it was only bound to those contracts involving the  
20 use and licensing of the brand – none of which are at issue in  
21 this case.

22 v. PCJV USA Parties’ Supporting Evidence: the following  
23 categories, which are defined above, capture the key phases  
24 and supporting evidence: Superseding Joint Venture (2008–  
25 2010), Alternative Licensing Arrangements and Ongoing  
26 Ratification (2011–2012), Formalization and Modification of  
27 the Joint Venture (2012), LA Group Partnership Agreement  
28 and Evolving Business Dynamics and Terms (2013–2018),

Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

vi. SPAVI Parties' Supporting Evidence: Each of the agreements included in the trial exhibits and testimony of Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which will establish that none of the Counterclaimants – PCJV, PCIT, LA Group LLC, GK Capital, NKM, or Koren have any contract to which Cinco has privity; the settlement agreement (Trial Exhibit 1172) and evidence of the dismissals with prejudice, as well as the pleadings in the prior case establishing what has been dismissed, and subject to retraxit.

f. Element No. 2: The Counterclaimant that is a party to the contract did all or substantially all of the things required under the contract, or were excused from so performing:

i. Disputed Status of Element 2: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. PCJV USA Parties' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.

iv. Plaintiff's Position Statement: as drafted it is impossible to know what the specific contract is at issue here. It has never been disclosed, and still undisclosed. So, when this element in the instructions says, "the contract," whereas the prior

1 element refers to some unidentified contract, as a matter of  
2 law, yes, this element is disputed. To the extent any actual  
3 contract ever existed between Cinco and these parties, the  
4 only one that is possible is the Settlement Agreement and  
5 corresponding agreement selling PCJV equity to GKK  
6 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
7 a party to any other contract with any of the Counterclaim  
8 Defendants, that is the only one that could possibly be at  
9 issue, but Defendants refuse to acknowledge this. It is  
10 possible that Counterclaimants are seeking to allege that  
11 Cinco is an alter ego of Potato Corner International or  
12 others, however, PCJV and the other counterclaimants  
13 already alleged this -- alter ego status of Cinco -- and after  
14 a negotiated settlement, dismissed this claim with prejudice.  
15 They may not raise it now. *See, e.g., Torrey Pines Bank v.*  
16 *Superior Ct.*, 216 Cal. App. 3d 813, 820 (Ct. App. 1989)  
17 (holding that “a dismissal with prejudice is the maiden name  
18 for a common law retraxit,” and “[a] retraxit is equivalent to  
19 a judgment on the merits and as such bars further litigation  
20 on the same subject matter between the parties.”); *Datta v.*  
21 *Staab*, 173 Cal. App. 2d 613, 620—21 (1959) (“The effect of  
22 a dismissal with prejudice is quite different, however, when  
23 it is executed and filed in return for a consideration moving  
24 from the defendant. Such a dismissal operates as a complete  
25 bar to any future action and has the same legal effect as a  
26 common law petraxit.”). Second, as for SPAVI, it purchased  
27 intellectual property, and did not assume any contracts  
28 binding Cinco. Thus, the claim that SPAVI is bound to good

1 faith and fair dealing as a “successor in interest has no basis”  
2 and can be resolved a matter of law,, given that this simply  
3 requires interpretation of contracts binding Cinco (of which  
4 there are no one) to which SPAVI assumed (also, null set).  
5 Put simply – S{PAVI is not a successor in interest to any  
6 contract of Cinco, and by purchasing the intellectual property  
7 of Cinco, it was only bound to those contracts involving the  
8 use and licensing of the brand – none of which are at issue in  
9 this case.

10 v. PCJV USA Parties’ Supporting Evidence: the following  
11 categories, which are defined above, capture the key phases  
12 and supporting evidence: Superseding Joint Venture (2008–  
13 2010), Alternative Licensing Arrangements and Ongoing  
14 Ratification (2011–2012), Formalization and Modification of  
15 the Joint Venture (2012), LA Group Partnership Agreement  
16 and Evolving Business Dynamics and Terms (2013–2018),  
17 Dispute, Litigation, and State Court Proceedings (2018 and  
18 Beyond), Ongoing Annual Ratification and Regulatory  
19 Compliance, and SPAVI Parties’ Tortious Conduct.

20 vi. SPAVI Parties’ Supporting Evidence: Each of the  
21 agreements included in the trial exhibits and testimony of  
22 Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which  
23 will establish that none of the Counterclaimants – PCJV,  
24 PCIT, LA Group LLC, GK Capital, NKM, or Koren have  
25 any contract to which Cinco has privity; the settlement  
26 agreement (Trial Exhibit 1172) and evidence of the  
27 dismissals with prejudice, as well as the pleadings in the  
28 prior case establishing what has been dismissed, and subject

1 to retraxit.

2 g. Element No. 3: Cinco or SPAVI engaged in conduct that breached  
3 the duty of good faith and fair dealing.

4 i. Disputed Status of Element 3: The parties dispute this  
5 element is satisfied.

6 ii. Nature of Dispute: factual and legal.

7 iii. PCJV USA Parties' Position Statement: Plaintiff's position  
8 statement does not address a legal issue concerning this  
9 element. To the extent Plaintiff's position statement  
10 addresses element 1, PCJV USA Parties incorporate their  
11 respective response here.

12 iv. Plaintiff's Position Statement: The only contracts that have  
13 been identified as being "breached" are the unsigned licensee  
14 agreement and the AJVA. Neither document binds Cinco –  
15 indeed, that the AJVA constitutes an agreement to agree and  
16 not a contract has already been adjudicated and decided as  
17 law of the case. It is impossible to know what the specific  
18 contract is at issue here. To the extent any actual contract  
19 ever existed between Cinco and these parties, the only one  
20 that is possible is the Settlement Agreement and  
21 corresponding agreement selling PCJV equity to GKK  
22 Capital. (Trial Exhibit 1176.) Because Cinco has never been  
23 a party to any other contract with any of the Counterclaim  
24 Defendants, that is the only one that could possibly be at  
25 issue, but Defendants refuse to acknowledge this. In the  
26 absence of a contract binding Cinco, it is possible that  
27 Counterclaimants are seeking to allege that Cinco is an alter  
28 ego of Potato Corner International or others, however,

1 PCJV and the other counterclaimants already alleged this --  
2 alter ego status of Cinco -- and after a negotiated settlement,  
3 dismissed this claim with prejudice. They may not raise it  
4 now. *See, e.g., Torrey Pines Bank v. Superior Ct.*, 216 Cal.  
5 App. 3d 813, 820 (Ct. App. 1989) (holding that “a dismissal  
6 with prejudice is the maiden name for a common law  
7 retraxit,” and “[a] retraxit is equivalent to a judgment on the  
8 merits and as such bars further litigation on the same subject  
9 matter between the parties.”); *Datta v. Staab*, 173 Cal. App.  
10 2d 613, 620—21 (1959) (“The effect of a dismissal with  
11 prejudice is quite different, however, when it is executed and  
12 filed in return for a consideration moving from the defendant.  
13 Such a dismissal operates as a complete bar to any future  
14 action and has the same legal effect as a common law  
15 petraxit.”). Second, as for SPAVI, it purchased intellectual  
16 property, and did not assume any contracts binding Cinco.  
17 Thus, the claim that SPAVI is bound to good faith and fair  
18 dealing as a “successor in interest has no basis” and can be  
19 resolved a matter of law,, given that this simply requires  
20 interpretation of contracts binding Cinco (of which there are  
21 no one) to which SPAVI assumed (also, null set). Put simply  
22 – S{PAVI is not a successor in interest to any contract of  
23 Cinco, and by purchasing the intellectual property of Cinco,  
24 it was only bound to those contracts involving the use and  
25 licensing of the brand– none of which are at issue in this  
26 case.

27 v. PCJV USA Parties’ Supporting Evidence: the following  
28 category, which is defined above, captures the key phase and



supporting evidence: SPAVI Parties' Tortious Conduct.

vi. SPAVI Parties' Supporting Evidence: The absence of evidence that Cinco was a party to, or breached, any contract with any of the Counterclaimants is the supporting evidence. Plaintiff's Position Statement: In addition to the absence of any contract binding Cinco or SPAVI – thus there could be no corresponding breach of the covenant of good faith and fair dealing – the evidence of Koren's behavior during the license negotiations, particularly with SPAVI, lead to the conclusion that it was he that caused the negotiations to fail, not anyone else. Testimony of SPAVI (Gregorio and Tan) as well as their correspondence with Koren (Trial Exhibits 20-31) will establish this. The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as law of the case. It is impossible to know what the specific contract is at issue here. To the extent any actual contract ever existed between Cinco and these parties, the only one that is possible is the Settlement Agreement and corresponding agreement selling PCJV equity to GKK Capital. (Trial Exhibit 1176.) I acknowledge has never been a party to any other contract with any of the Counterclaim Defendants, which is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

h. Element No. 4: Counterclaimants were harmed.

- i. Disputed Status of Element 4: The parties dispute this element is satisfied.
- ii. Nature of Dispute: legal.
- iii. PCJV Usa Parties' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.
- iv. Plaintiff's Position Statement: Cinco breached no contract. The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as law of the case. It is impossible to know what the specific contract is at issue here. To the extent any actual contract ever existed between Cinco and these parties, the only one that is possible is the Settlement Agreement and corresponding agreement selling PCJV equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco has never been a party to any other contract with any of the Counterclaim Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

**i. Cause of Action No. 11: Quantum Meruit.**

- i. Element No. 1: any of the SPAVI Parties requested, by words or conduct, that any one of the PCJV USA Parties perform services for the benefit of any of the SPAVI Parties.
- i. Disputed Status of Element 1: The parties dispute that

1 this element is satisfied.

2 ii. Nature of Dispute: Factual

3 iii. PCJV USA Parties' Supporting Evidence: the following  
4 categories, which are defined above, capture the key  
5 phases and supporting evidence: Superseding Joint  
6 Venture (2008–2010), Alternative Licensing  
7 Arrangements and Ongoing Ratification (2011–2012),  
8 Formalization and Modification of the Joint Venture  
9 (2012), LA Group Partnership Agreement and Evolving  
10 Business Dynamics and Terms (2013–2018), Dispute,  
11 Litigation, and State Court Proceedings (2018 and  
12 Beyond), and Ongoing Annual Ratification and  
13 Regulatory Compliance.

14 iv. SPAVI and Cinco's Supporting Evidence: the lack of  
15 evidence of this will suffice. Testimony of Gregorio will  
16 confirm as will testimony of Koren.

17 ii. Element No. 2: any one of the PCJV USA Parties performed  
18 the services as requested.

19 i. Disputed Status of Element 2: The parties dispute that  
20 this element is satisfied.

21 ii. Nature of Dispute: factual

22 iii. PCJV USA Parties' Supporting Evidence: the following  
23 categories, which are defined above, capture the key  
24 phases and supporting evidence: Superseding Joint  
25 Venture (2008–2010), Alternative Licensing  
26 Arrangements and Ongoing Ratification (2011–2012),  
27 Formalization and Modification of the Joint Venture  
28 (2012), LA Group Partnership Agreement and Evolving

- 1 Business Dynamics and Terms (2013–2018), Dispute,  
2 Litigation, and State Court Proceedings (2018 and  
3 Beyond), Ongoing Annual Ratification and Regulatory  
4 Compliance, and SPAVI Parties' Tortious Conduct.
- 5 iv. SPAVI and Cinco's Supporting Evidence: the lack of  
6 evidence of this will suffice. Testimony of Gregorio will  
7 confirm as will testimony of Koren.
- 8 iii. Element No. 3: the requesting SPAVI Party/Parties has not  
9 paid any one of the PCJV USA Parties for the services.
- 10 i. Disputed Status of Element 3: The parties dispute that  
11 this element is satisfied.
- 12 ii. Nature of Dispute: Factual
- 13 iii. PCJV USA Parties' Supporting Evidence: the following  
14 category, which is defined above, captures the key phase  
15 and supporting evidence: SPAVI Parties' Tortious  
16 Conduct.
- 17 iv. SPAVI and Cinco's Supporting Evidence: the lack of  
18 evidence of this will suffice. Testimony of Gregorio will  
19 confirm as will testimony of Koren.
- 20 iv. Element No. 4: the reasonable value of the services that were  
21 provided.
- 22 i. Disputed Status of Element 4: The parties dispute that  
23 this element is satisfied.
- 24 ii. Nature of Dispute: Factual
- 25 iii. PCJV USA Parties' Supporting Evidence: documents and  
26 testimony including and related to the following: (1)  
27 PCJV USA Parties' financial records; (2) PCJV USA  
28 Parties' historical growth; and (3) PJCv USA Parties'

franchisee agreements and communications.

iv. SPAVI and Cinco's Supporting Evidence: there is no evidence of this.

### III. SPAVI Parties' Affirmative Defenses

1) Affirmative Defense No. 1: Laches (asserted by Counter Defendant and Third Party Defendants as to all claims alleged against them)

a. Element No. 1: A Delay in asserting a claim.

i. This element is disputed

ii. Nature of Dispute: Legal and Factual

iii. Plaintiff's Position Statement: Laches is an affirmative defense.

iv. Defendants' Position Statement: Laches is an equitable claim to be tried by the Court. *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*, 856 F.Supp. 2d 1136, 1151 (2012).

v. Plaintiff's Supporting Evidence: Both the JVA and AJVA contain an agreement to agree on a Master License Agreement. However, there was never a written license agreement executed between Counterclaimants and Cinco. Counterclaimants entered into a negotiation process with Cinco, prior to SPAVI's acquisition of the Potato Corner brand and all of the Potato Corner Intellectual Property from Cinco, for the terms of a license to use the Potato Corner Intellectual Property. These negotiations began before SPAVI purchased the rights to the Potato Corner IP. So, Counterclaimants have been aware of the lack of ownership rights in the Potato

1 Corner Intellectual Property and the non-existence of a  
2 written agreement. Then, between December of 2021  
3 through 2024, the months immediately preceding this  
4 action, SPAVI engaged in a good faith and exhaustive  
5 attempt to negotiate the terms of a written license with  
6 PCJV as well. Never once did Counterclaimants state that  
7 they had ownership rights to the Potato Corner  
8 Intellectual Property, and SPAVI relied on that  
9 representation because had one been expressed, that  
10 would have been a dispute as to the ownership rights to  
11 which SPAVI would have filed this lawsuit sooner.  
12 Additional evidence includes: Notarized Deeds signed by  
13 seller and buyer; USPTO filings including Registrations  
14 and Assignments; Testimony of Gregorio (Plaintiff's  
15 CEO), Magsaysay (Cinco's CEO), Koren, Ybanez  
16 (Plaintiff's General Counsel), Tan (Director responsible  
17 for international franchising); and emails and  
18 correspondence during the negotiation of the terms of the  
19 license agreement.

20 vi. PCJV USA's Parties Supporting Evidence: SPAVI parties  
21 have not articulated their defense beyond what is included  
22 in their Answers until 7am on August 12, 2025. *See* n. 1.  
23 As it is articulated in the Answers, PCJV Parties cannot  
24 determine the factual basis for the defense. As such, the  
25 out of an abundance of caution, PCJV Parties incorporate  
26 by reference all of the evidence cited in support of their  
27 causes of action

28 b. Element No. 2: acquiescence by Counterclaim Defendants or Third

1 Party Defendants or their suffering of prejudice, which can include  
2 detrimental reliance on the status quo, loss of evidence, or other  
3 circumstances that make it inequitable to allow the claimants to  
4 assert their claim after the delay.

5 i. This element is disputes

6 ii. Nature of Dispute: Legal and factual

7 iii. Plaintiff's Position Statement: Laches is an affirmative  
8 defense.

9 iv. PCJV USA Parties' Position Statement: PCJV USA

10 Parties' Position Statement: Laches is an equitable claim  
11 to be tried by the Court. *Ultimax Cement Mfg. Corp. v.*  
12 *CTS Cement Mfg. Corp.*, 856 F.Supp. 2d 1136, 1151  
13 (2012). "A defendant must demonstrate three elements to  
14 successfully assert laches defense: (1) delay in asserting a  
15 right or claim; (2) the delay was not reasonable or  
16 excusable; and (3) prejudice to the party against whom  
17 laches is asserted." *Magic Kitchen LLC v. Good Things*  
18 *Internat., Ltd.*, 153 Cal. App. 4th 1144, 1157 (2007).  
19 SPAVI Parties' statement of what it needs to prove here  
20 as an element to laches is incorrect

21 v. Plaintiff's Supporting Evidence: Both the JVA and AJVA  
22 contain an agreement to agree on a Master License  
23 Agreement. However, there was never a written license  
24 agreement executed between Counterclaimants and  
25 Cinco. Counterclaimants entered into a negotiation  
26 process with Cinco, prior to SPAVI's acquisition of the  
27 Potato Corner brand and all of the Potato Corner  
28 Intellectual Property from Cinco, for the terms of a



1 license to use the Potato Corner Intellectual Property.  
2 These negotiations began in [DATE]. So, as of [DATE],  
3 Counterclaimants have been aware of the lack of  
4 ownership rights in the Potato Corner Intellectual  
5 Property and the non-existence of a written agreement.  
6 Then, between December of 2021 through 2024, the  
7 months immediately preceding this action, SPAVI  
8 engaged in a good faith and exhaustive attempt to  
9 negotiate the terms of a written license with PCJV as  
10 well. Never once did Counterclaimants state that they had  
11 ownership rights to the Potato Corner Intellectual  
12 Property, and SPAVI relied on that representation because  
13 had one been expressed, that would have been a dispute  
14 as to the ownership rights to which SPAVI would have  
15 filed this lawsuit sooner. Additional evidence includes:  
16 Notarized Deeds signed by seller and buyer; USPTO  
17 filings including Registrations and Assignments;  
18 Testimony of Gregorio (Plaintiff's CEO), Magsaysay  
19 (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
20 Counsel), Tan (Director responsible for international  
21 franchising); and emails and correspondence during the  
22 negotiation of the terms of the license agreement.

23 vi. PCJV USA Parties' Supporting Evidence: SPAVI parties  
24 have not articulated their defense beyond what is included  
25 in their Answers until 7am on August 12, 2025. *See* n. 1.  
26 As it is articulated in the Answers, PCJV Parties cannot  
27 determine the factual basis for the defense. As such, the  
28 out of an abundance of caution, PCJV Parties incorporate

1 by reference all of the evidence cited in support of their  
2 causes of action.

3 2) **Affirmative Defense No. 2:** Consent (asserted by Counterclaim  
4 Defendant and Third Party Defendants as to all claims alleged against  
5 them)

6 a. Element No. 1: One or more of the Counterclaimants or Third Party  
7 Plaintiffs consented to the acts about which they complain.

8 i. This element is disputed.

9 ii. Nature of Dispute: Legal and factual

10 iii. Plaintiff's Position Statement: The elements are taken  
11 from CACI 1721

12 iv. PCJV USA Parties' Position Statement: SPAVI Parties'  
13 appear to have combined an element of their laches  
14 affirmative defense. Otherwise, there is no legal support  
15 for SPAVI Parties' articulated element

16 v. Plaintiff's Supporting Evidence: Both the JVA and AJVA  
17 contain an agreement to agree on a Master License  
18 Agreement. However, there was never a written license  
19 agreement executed between Counterclaimants and  
20 Cinco. Counterclaimants entered into a negotiation  
21 process with Cinco, prior to SPAVI's acquisition of the  
22 Potato Corner brand and all of the Potato Corner  
23 Intellectual Property from Cinco, for the terms of a  
24 license to use the Potato Corner Intellectual Property.  
25 These negotiations began in [DATE]. So, as of [DATE],  
26 Counterclaimants have been aware of the lack of  
27 ownership rights in the Potato Corner Intellectual  
28 Property and the non-existence of a written agreement.

1 Then, between December of 2021 through 2024, the  
2 months immediately preceding this action, SPAVI  
3 engaged in a good faith and exhaustive attempt to  
4 negotiate the terms of a written license with PCJV as  
5 well. Never once did Counterclaimants state that they had  
6 ownership rights to the Potato Corner Intellectual  
7 Property, and SPAVI relied on that representation because  
8 had one been expressed, that would have been a dispute  
9 as to the ownership rights to which SPAVI would have  
10 filed this lawsuit sooner. Additional evidence includes:  
11 Notarized Deeds signed by seller and buyer; USPTO  
12 filings including Registrations and Assignments;  
13 Testimony of Gregorio (Plaintiff's CEO), Magsaysay  
14 (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
15 Counsel), Tan (Director responsible for international  
16 franchising); and emails and correspondence during the  
17 negotiation of the terms of the license agreement.

18 vi. PCJV USA Parties' Supporting Evidence: SPAVI parties  
19 have not articulated their defense beyond what is included  
20 in their Answers until 7am on August 12, 2025. *See* n. 1.  
21 As it is articulated in the Answers, PCJV Parties cannot  
22 determine the factual basis for the defense. As such, the  
23 out of an abundance of caution, PCJV Parties incorporate  
24 by reference all of the evidence cited in support of their  
25 causes of action.

26 3) **Affirmative Defense No. 3**: Estoppel (asserted by Counterclaim  
27 Defendant and Third Party Defendants as to all claims alleged against  
28 them)

- 1 a. Element No. 1: A representation or concealment of material facts;
- 2 i. This element is disputed
- 3 ii. Nature of Dispute: Legal and factual
- 4 iii. SPAVI and Cinco's Position Statement: Estoppel is an
- 5 affirmative defense
- 6 iv. PCJV USA Parties Position: PCJV USA Parties' Position
- 7 Statement: Equitable estoppel is an equitable claim to be
- 8 tried by the Court. *Ultimax Cement Mfg. Corp. v. CTS*
- 9 *Cement Mfg. Corp.*, 856 F.Supp. 2d 1136, 1151 (2012).
- 10 v. Plaintiff's Supporting Evidence: Counterclaimants have
- 11 no evidence of a written license to use SPAVI's Potato
- 12 Corner Intellectual Property, and, as such, its rights (that
- 13 it has sold to its franchisees) derive from what is, at best,
- 14 a terminable at will, fully revocable license because
- 15 Defendants were nonetheless operating Potato Corner
- 16 locations, as if a written license existed. See *Pogrebnoy v.*
- 17 *Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d
- 18 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th
- 19 Cir. 2018) ("[A]n implied license, like any other contract,
- 20 is terminable at the will of either party if it is not for a
- 21 specified term."). After SPAVI's acquisition of the Potato
- 22 Corner brand, it became the licensor of the Potato Corner
- 23 Intellectual Property. Between December of 2021 through
- 24 2024, the months immediately preceding this action,
- 25 SPAVI engaged in a good faith and exhaustive attempt to
- 26 negotiate the terms of a written license with PCJV.
- 27 Defendant Guy Koren engaged and participated in this
- 28 negotiation, but was unwilling to agree to any minimally

1 commercially viable licensing terms. Never once did  
2 Counterclaimants state that they had ownership rights to  
3 the Potato Corner Intellectual Property, and SPAVI relied  
4 on that representation. Additional evidence includes:  
5 Testimony of Gregorio (Plaintiff's CEO), Magsaysay  
6 (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
7 Counsel), Tan (Director responsible for international  
8 franchising); and emails and correspondence during the  
9 negotiation of the terms of the license agreement.

10 vi. PCJV USA Parties' Supporting Evidence: SPAVI parties  
11 have not articulated their defense beyond what is included  
12 in their Answers. As it is articulated there, PCJV Parties  
13 cannot determine the factual basis for the defense. As  
14 such, the out of an abundance of caution, PCJV Parties  
15 incorporate by reference all of the evidence cited in  
16 support of their causes of action.

17 b. Element 2: Made with knowledge, actual or virtual, of the facts;

18 i. This element is disputed

19 ii. Nature of Dispute: Legal and factual

20 iii. Plaintiff's Position Statement: Estoppel is an affirmative  
21 defense

22 iv. PCJV USA Parties' Position Statement: Equitable  
23 estoppel is an equitable claim to be tried by the Court.  
24 *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*,  
25 856 F.Supp. 2d 1136, 1151 (2012).

26 v. Plaintiff's Supporting Evidence: Plaintiff's Supporting  
27 Evidence: Counterclaimants have no evidence of a written  
28 license to use SPAVI's Potato Corner Intellectual

1 Property, and, as such, its rights (that it has sold to its  
2 franchisees) derive from what is, at best, a terminable at  
3 will, fully revocable license because Defendants were  
4 nonetheless operating Potato Corner locations, as if a  
5 written license existed. *See Pogrebnoy v. Russian*  
6 *Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070  
7 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018)  
8 (“[A]n implied license, like any other contract, is  
9 terminable at the will of either party if it is not for a  
10 specified term.”). After SPAVI’s acquisition of the Potato  
11 Corner brand, it became the licensor of the Potato Corner  
12 Intellectual Property. Between December of 2021 through  
13 2024, the months immediately preceding this action,  
14 SPAVI engaged in a good faith and exhaustive attempt to  
15 negotiate the terms of a written license with PCJV.  
16 Defendant Guy Koren engaged and participated in this  
17 negotiation, but was unwilling to agree to any minimally  
18 commercially viable licensing terms. Never once did  
19 Counterclaimants state that they had ownership rights to  
20 the Potato Corner Intellectual Property, and SPAVI relied  
21 on that representation. Additional evidence includes:  
22 Testimony of Gregorio (Plaintiff’s CEO), Magsaysay  
23 (Cinco’s CEO), Koren, Ybanez (Plaintiff’s General  
24 Counsel), Tan (Director responsible for international  
25 franchising); and emails and correspondence during the  
26 negotiation of the terms of the license agreement

27 vi. PCJV USA Parties’ Supporting Evidence: SPAVI parties  
28 have not articulated their defense beyond what is included

1 in their Answers. As it is articulated there, PCJV Parties  
2 cannot determine the factual basis for the defense. As  
3 such, the out of an abundance of caution, PCJV Parties  
4 incorporate by reference all of the evidence cited in  
5 support of their causes of action

6 c. Element 3: To a party ignorant, actually, and permissibly, of the  
7 truth;

- 8 i. This element is disputed
- 9 ii. Nature of Dispute: legal and factual
- 10 iii. Plaintiff's position statement: Estoppel is an affirmative  
11 defense
- 12 iv. PCJV USA Parties' Position Statement: Equitable  
13 estoppel is an equitable claim to be tried by the Court.  
14 *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*,  
15 856 F.Supp. 2d 1136, 1151 (2012).
- 16 v. Plaintiff's Supporting Evidence: Plaintiff's Supporting  
17 Evidence: Counterclaimants have no evidence of a written  
18 license to use SPAVI's Potato Corner Intellectual  
19 Property, and, as such, its rights (that it has sold to its  
20 franchisees) derive from what is, at best, a terminable at  
21 will, fully revocable license because Defendants were  
22 nonetheless operating Potato Corner locations, as if a  
23 written license existed. See *Pogrebnoy v. Russian*  
24 *Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070  
25 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018)  
26 ("[A]n implied license, like any other contract, is  
27 terminable at the will of either party if it is not for a  
28 specified term."). After SPAVI's acquisition of the Potato



1 Corner brand, it became the licensor of the Potato Corner  
2 Intellectual Property. Between December of 2021 through  
3 2024, the months immediately preceding this action,  
4 SPAVI engaged in a good faith and exhaustive attempt to  
5 negotiate the terms of a written license with PCJV.  
6 Defendant Guy Koren engaged and participated in this  
7 negotiation, but was unwilling to agree to any minimally  
8 commercially viable licensing terms. Never once did  
9 Counterclaimants state that they had ownership rights to  
10 the Potato Corner Intellectual Property, and SPAVI relied  
11 on that representation. Instead, Counterclaimant engaged  
12 in the negotiation process. Additional evidence includes:  
13 Testimony of Gregorio (Plaintiff's CEO), Magsaysay  
14 (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
15 Counsel), Tan (Director responsible for international  
16 franchising); and emails and correspondence during the  
17 negotiation of the terms of the license agreement

18 vi. PCJV USA Parties' Supporting Evidence: SPAVI parties  
19 have not articulated their defense beyond what is included  
20 in their Answers. As it is articulated there, PCJV Parties  
21 cannot determine the factual basis for the defense. As  
22 such, the out of an abundance of caution, PCJV Parties  
23 incorporate by reference all of the evidence cited in  
24 support of their causes of action

25 d. Element 4: With the intention, actual or virtual, that the ignorant  
26 party act on it; and

27 i. This element is disputed

28 ii. Nature of Dispute: legal and factual

1                   iii. Plaintiff's position statement: Estoppel is an affirmative  
2                   defense

3                   iv. PCJV USA Parties' Position Statement: Equitable  
4                   estoppel is an equitable claim to be tried by the Court.  
5                   *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*,  
6                   856 F.Supp. 2d 1136, 1151 (2012).

7                   v. Plaintiff's Supporting Evidence: Never once did  
8                   Counterclaimants state that they had ownership rights to  
9                   the Potato Corner Intellectual Property. Instead,  
10                  Defendant Guy Koren engaged and participated in the  
11                  negotiation of the license to use the Potato Corner  
12                  Intellectual Property, with the intent of having SPAVI  
13                  relied on that representation that Counterclaimant did not  
14                  have a license. Additional evidence includes: Testimony  
15                  of Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO),  
16                  Koren, Ybanez (Plaintiff's General Counsel), Tan  
17                  (Director responsible for international franchising); and  
18                  emails and correspondence during the negotiation of the  
19                  terms of the license agreement

20                  vi. PCJV USA Parties' Supporting Evidence: SPAVI parties  
21                  have not articulated their defense beyond what is included  
22                  in their Answers. As it is articulated there, PCJV Parties  
23                  cannot determine the factual basis for the defense. As  
24                  such, the out of an abundance of caution, PCJV Parties  
25                  incorporate by reference all of the evidence cited in  
26                  support of their causes of action.

27                  e. Element 5: That party was induced to act on it and was harmed.

28                  i. This element is disputed

1 ii. Nature of Dispute: legal and factual

2 iii. Plaintiff's position statement: Estoppel is an affirmative  
3 defense

4 iv. PCJV USA Parties' Position Statement: Equitable  
5 estoppel is an equitable claim to be tried by the Court.  
6 *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*,  
7 856 F.Supp. 2d 1136, 1151 (2012).

8 v. Plaintiff's Supporting Evidence: Never once did  
9 Counterclaimants state that they had ownership rights to  
10 the Potato Corner Intellectual Property. Instead,  
11 Defendant Guy Koren engaged and participated in the  
12 negotiation of the license to use the Potato Corner  
13 Intellectual Property, with the intent of having SPAVI  
14 relied on that representation that Counterclaimant did not  
15 have a license. Guy Koren refused to, engage in  
16 reasonable and good faith negotiation. Instead, he only  
17 offered royalty rates and license fees that were more than  
18 90% below what Koren had agreed to be reasonable  
19 licensing fees over a decade prior. Koren also repeatedly  
20 disengaged from the negotiation process, but still was  
21 utilizing the Potato Corner Intellectual Property. In the  
22 three months prior to the termination of the licensing  
23 agreement, Koren had gone radio silent, leading SPAVI to  
24 believe that it no longer was interested in negotiating a  
25 license. Therefore, SPAVI had no option, but to terminate  
26 Counterclaimants license of the Potato Corner Intellectual  
27 Property. Additional evidence includes: Testimony of  
28 Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO),

1 Koren, Ybanez (Plaintiff's General Counsel), Tan  
2 (Director responsible for international franchising); and  
3 emails and correspondence during the negotiation of the  
4 terms of the license agreement

5 vi. PCJV USA Parties' Supporting Evidence: SPAVI parties  
6 have not articulated their defense beyond what is included  
7 in their Answers. As it is articulated there, PCJV Parties  
8 cannot determine the factual basis for the defense. As  
9 such, the out of an abundance of caution, PCJV Parties  
10 incorporate by reference all of the evidence cited in  
11 support of their causes of action.

12 4) **Affirmative Defense No. 4** Failure to Mitigate Damages (asserted by  
13 Counterclaim Defendant and Third Party Defendants as to all claims  
14 alleged against them)

15 a. Element No. 1: That the party seeking the damage award failed to  
16 use reasonable efforts to mitigate damages

17 i. This element is disputed

18 ii. Nature of Dispute: factual

19 iii. Plaintiff's Supporting Evidence: Both the JVA and AJVA  
20 contain an agreement to agree on a Master License  
21 Agreement. There was never a written license agreement  
22 between Counterclaimants and counter defendants or third  
23 party defendants for the use of the Potato Corner  
24 Intellectual Property. Counterclaimants entered into a  
25 negotiation process with Cinco, prior to SPAVI's  
26 acquisition of the Potato Corner brand and all of the  
27 Potato Corner Intellectual Property from Cinco, for the  
28 terms of a license to use the Potato Corner Intellectual

1 Property. These negotiations began before SPAVI  
2 purchased the rights to the Potato Corner IP. So,  
3 Counterclaimants have been aware of the lack of  
4 ownership rights in the Potato Corner Intellectual  
5 Property and the non-existence of a written agreement.  
6 Then, between December of 2021 through 2024, the  
7 months immediately preceding the filing of this action,  
8 SPAVI engaged in a good faith and exhaustive attempt to  
9 negotiate the terms of a written license with  
10 Counterclaimants as well. Never once did  
11 Counterclaimants state that they had ownership rights to  
12 the Potato Corner Intellectual Property, and SPAVI relied  
13 on that representation because had one been expressed,  
14 that would have been a dispute as to the ownership rights  
15 to which SPAVI would have filed this lawsuit sooner.  
16 Moreover, Guy Koren refused to engage in reasonable  
17 and good faith negotiation, which would have led to the  
18 execution of a licensing agreement. Instead, he only  
19 offered royalty rates and license fees that were more than  
20 90% below what Koren had agreed to be reasonable  
21 licensing fees over a decade prior. Koren also repeatedly  
22 disengaged from the negotiation process, but still was  
23 utilizing the Potato Corner Intellectual Property. In the  
24 three months prior to the termination of the licensing  
25 agreement, Koren had gone radio silent, leading SPAVI to  
26 believe that it no longer was interested in negotiating a  
27 license. Therefore, SPAVI had no option, but to terminate  
28 Counterclaimants license to use the Potato Corner

1 Intellectual Property. Additional evidence includes:  
2 Notarized Deeds signed by seller and buyer; USPTO  
3 filings including Registrations and Assignments;  
4 Testimony of Gregorio (Plaintiff's CEO), Magsaysay  
5 (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
6 Counsel), Tan (Director responsible for international  
7 franchising); May 31, 2024 Termination Letter; and  
8 emails and correspondence during the negotiation of the  
9 terms of the license agreement.

10 iv. Defendants' Supporting Evidence: SPAVI parties have  
11 not articulated their defense beyond what is included in  
12 their Answers until 7am on August 12, 2025. *See* n. 1. As  
13 it is articulated in the Answers, PCJV Parties cannot  
14 determine the factual basis for the defense. As such, the  
15 out of an abundance of caution, PCJV Parties incorporate  
16 by reference all of the evidence cited in support of their  
17 causes of action

18 b. Element No. 2: the amount, if any, by which damages have been  
19 mitigated

- 20 i. This element is disputed
- 21 ii. Nature of Dispute: factual
- 22 iii. Plaintiff's Supporting Evidence: Had Counterclaimants  
23 negotiated in good faith, SPAVI would have executed a  
24 license agreement and not terminated the licensing  
25 agreement. The amount of alleged damage resulting from  
26 the termination of the license agreement could have been  
27 mitigated. Additional evidence includes: Amended Joint  
28 Venture Agreement and Joint Venture Agreement;

1 Testimony of Koren, Plaintiff executives Gregorio  
2 (Plaintiff's CEO), Concepcion (Plaintiff's COO charged  
3 with US operations), Tan (Director responsible for  
4 international franchising); Emails and correspondence  
5 with SPAVI, Koren, and PCJV relating to negotiations of  
6 a licensing agreement for the use of the Potato Corner  
7 Intellectual Property; Financial documents of  
8 Counterclaimants; May 31, 2024 Termination Letter  
9 iv. Defendants' Supporting Evidence: SPAVI parties have  
10 not articulated their defense beyond what is included in  
11 their Answers until 7am on August 12, 2025. *See* n. 1. As  
12 it is articulated in the Answers, PCJV Parties cannot  
13 determine the factual basis for the defense. As such, the  
14 out of an abundance of caution, PCJV Parties incorporate  
15 by reference all of the evidence cited in support of their  
16 causes of action

17 5) **Affirmative Defense No. 5:** Immunity (asserted by SPAVI as to all  
18 claims alleged against it)

19 a. **Element No. 1** – That Counterclaim Defendant had a legitimate  
20 economic interest and thus shielded from liability in pursuit of its own  
21 lawful business interests

- 22 i. This element is disputed  
23 ii. Nature of Dispute: Legal and factual  
24 iii. **PCJV USA Parties' Position Statement:** PCJV USA  
25 Parties cannot articulate a response to this affirmative  
26 defense because SPAVI Parties did not provide their  
27 statement of what the applicable elements are or their  
28 positions regarding those elements. They have otherwise



not articulated how this affirmative defense applies beyond their Answers.

iv. Plaintiff's Supporting Evidence: In December 2021, SPAVI entered into a transaction to acquire the Potato Corner Intellectual Property, including the Potato Corner Standard Characters Mark and the Potato Corner Logo Mark, and all of the rights thereto, from Cinco. That transaction closed during the first half of 2022. As such, SPAVI had an economic interest in the Potato Corner Intellectual Property. Additional evidence includes: Notarized Deeds signed by seller and buyer; USPTO filings including Registrations and Assignments, testimony of Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO), Tan (Director responsible for international franchising)

v. PCJV USA Parties' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers. As it is articulated there, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action.

6) **Affirmative Defense No. 6**: Privilege (asserted by SPAVI as to all claims alleged against it)

a. Element No. 1 – That Counterclaim Defendant had a legitimate economic interest

i. This element is disputed

ii. Nature of Dispute: legal and factual

1                   iii. Defendants' Position Statement: SPAVI parties have not  
2                   articulated their defense beyond what is included in their  
3                   Answers. *See* n. 1. As it is articulated in the Answers,  
4                   PCJV Parties cannot determine the legal basis for the  
5                   defense

6                   iv. Plaintiff's Supporting Evidence: In December 2021,  
7                   SPAVI entered into a transaction to acquire the Potato  
8                   Corner Intellectual Property, including the Potato Corner  
9                   Standard Characters Mark and the Potato Corner Logo  
10                  Mark, and all of the rights thereto, from Cinco. That  
11                  transaction closed during the first half of 2022. As such,  
12                  SPAVI had an economic interest in the Potato Corner  
13                  Intellectual Property. Additional evidence includes:  
14                  Notarized Deeds signed by seller and buyer; USPTO  
15                  filings including Registrations and Assignments,  
16                  testimony of Gregorio (Plaintiff's CEO), Magsaysay  
17                  (Cinco's CEO), Tan (Director responsible for  
18                  international franchising)

19                  v. Defendants' Supporting Evidence: SPAVI parties have  
20                  not articulated their defense beyond what is included in  
21                  their Answers until 7am on August 12, 2025. *See* n. 1. As  
22                  it is articulated in the Answers, PCJV Parties cannot  
23                  determine the factual basis for the defense. As such, the  
24                  out of an abundance of caution, PCJV Parties incorporate  
25                  by reference all of the evidence cited in support of their  
26                  causes of action

27                  b. Element No. 2 – That Counterclaim Defendant acted only to protect its  
28                  own economic interest.

- i. This element is disputed
- ii. Nature of Dispute: legal and factual
- iii. Defendants' Position Statement: SPAVI parties have not articulated their defense beyond what is included in their Answers. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the legal basis for the defense.
- iv. Plaintiff's Supporting Evidence: Counterclaimant have no evidence of a written license to use SPAVI's Potato Corner Intellectual Property, and, as such, its rights (that it has sold to its franchisees) derive from what is, at best, a terminable at will, fully revocable license because Defendants were nonetheless operating Potato Corner locations, as if a written license existed. *See Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018) ("[A]n implied license, like any other contract, is terminable at the will of either party if it is not for a specified term."). After SPAVI's acquisition of the Potato Corner brand, it became the licensor of the Potato Corner Intellectual Property. Between December of 2021 through 2024, the months immediately preceding this action, SPAVI engaged in a good faith and exhaustive attempt to negotiate the terms of a written license with PCJV. Defendant Guy Koren engaged and participated in this negotiation, but was unwilling to agree to any minimally commercially viable licensing terms. Therefore, Plaintiff had no option to terminate the license of the Potato

1 Corner Intellectual Property. Additional evidence  
2 includes: Testimony of Koren, Plaintiff executives  
3 Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's  
4 COO charged with US operations), Tan (Director  
5 responsible for international franchising), Magsaysay  
6 (Cinco's CEO); Emails and correspondence with SPAVI,  
7 Koren, and PCJV relating to negotiations of a licensing  
8 agreement for the use of the Potato Corner Intellectual  
9 Property; Amended Joint Venture Agreement; Franchise  
10 Agreements; FDDs; Trial Exhibit 29 (May 31, 2024  
11 Termination)

12 v. Defendants' Supporting Evidence: SPAVI parties have  
13 not articulated their defense beyond what is included in  
14 their Answers until 7am on August 12, 2025. *See* n. 1. As  
15 it is articulated in the Answers, PCJV Parties cannot  
16 determine the factual basis for the defense. As such, the  
17 out of an abundance of caution, PCJV Parties incorporate  
18 by reference all of the evidence cited in support of their  
19 causes of action.

20 c. Element No. 3 – That Counterclaim Defendant acted reasonably and in  
21 good faith to protect it.

- 22 i. This element is disputed  
23 ii. Nature of Dispute: legal and factual  
24 iii. Defendants' Position Statement: SPAVI parties have not  
25 articulated their defense beyond what is included in their  
26 Answers. *See* n. 1. As it is articulated in the Answers,  
27 PCJV Parties cannot determine the legal basis for the  
28 defense.

1                   iv. Plaintiff's Supporting Evidence: Counterclaimant have no  
2                   evidence of a written license to use SPAVI's Potato  
3                   Corner Intellectual Property, and, as such, its rights (that  
4                   it has sold to its franchisees) derive from what is, at best,  
5                   a terminable at will, fully revocable license because  
6                   Defendants were nonetheless operating Potato Corner  
7                   locations, as if a written license existed. *See Pogrebnoy v.*  
8                   *Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d  
9                   1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th  
10                  Cir. 2018) ("[A]n implied license, like any other contract,  
11                  is terminable at the will of either party if it is not for a  
12                  specified term."). After SPAVI's acquisition of the Potato  
13                  Corner brand, it became the licensor of the Potato Corner  
14                  Intellectual Property. Between December of 2021 through  
15                  2024, the months immediately preceding this action,  
16                  SPAVI engaged in a good faith and exhaustive attempt to  
17                  negotiate the terms of a written license with PCJV.  
18                  Defendant Guy Koren engaged and participated in this  
19                  negotiation, but was unwilling to agree to any minimally  
20                  commercially viable licensing terms. Therefore, Plaintiff  
21                  had no option to terminate the license of the Potato  
22                  Corner Intellectual Property. Additional evidence  
23                  includes: Testimony of Koren, Plaintiff executives  
24                  Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's  
25                  COO charged with US operations), Tan (Director  
26                  responsible for international franchising), Magsaysay  
27                  (Cinco's CEO); Emails and correspondence with SPAVI,  
28                  Koren, and PCJV relating to negotiations of a licensing

1 agreement for the use of the Potato Corner Intellectual  
2 Property; Amended Joint Venture Agreement; Franchise  
3 Agreements; FDDs; Trial Exhibit 29 (May 31, 2024  
4 Termination)

5 v. Defendants' Supporting Evidence: SPAVI parties have  
6 not articulated their defense beyond what is included in  
7 their Answers until 7am on August 12, 2025. *See* n. 1. As  
8 it is articulated in the Answers, PCJV Parties cannot  
9 determine the factual basis for the defense. As such, the  
10 out of an abundance of caution, PCJV Parties incorporate  
11 by reference all of the evidence cited in support of their  
12 causes of action.

13 7) **Affirmative Defense No. 7:** Unclean Hands (asserted by Counterclaim  
14 Defendant and Third Party Defendants as to all claims alleged against  
15 them)

16 a. **Element No. 1:** Counterclaimant engaged in inequitable and/or  
17 unethical behavior that bars it from seeking relief

- 18 i. This element is disputed  
19 ii. Nature of Dispute: factual  
20 iii. **Plaintiff's Supporting Evidence:** Counterclaimants have at  
21 best, a terminable at will, fully revocable license because  
22 Defendants were nonetheless operating Potato Corner  
23 locations, as if a written license existed. *See Pogrebnoy v.*  
24 *Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d  
25 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th  
26 Cir. 2018) ("[A]n implied license, like any other contract,  
27 is terminable at the will of either party if it is not for a  
28 specified term."). Despite using the Potato Corner

1 Intellectual Property for over a decade, Counterclaimants  
2 have never once paid a single cent of a licensing for its  
3 use to Cinco nor SPAVI. Counterclaimants have used  
4 Cinco's, and after the asset purchase, SPAVI's trademark  
5 without compensation to either party. Additional evidence  
6 includes: Financial statements of Counterclaimants  
7 evidence that no licensing fees have ever been paid;  
8 Notarized Deeds signed by seller and buyer; USPTO  
9 filings including Registrations and Assignments;  
10 Testimony of Gregorio (Plaintiff's CEO), Magsaysay  
11 (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
12 Counsel), Tan (Director responsible for international  
13 franchising), Concepcion (Plaintiff's COO charged with  
14 US operations); emails and correspondence with Cinco,  
15 SPAVI, Koren, and PCJV relating to negotiations of a  
16 licensing agreement

17 iv. Defendants' Supporting Evidence: SPAVI parties have  
18 not articulated their defense beyond what is included in  
19 their Answers until 7am on August 12, 2025. *See* n. 1. As  
20 it is articulated in the Answers, PCJV Parties cannot  
21 determine the factual basis for the defense. As such, the  
22 out of an abundance of caution, PCJV Parties incorporate  
23 by reference all of the evidence cited in support of their  
24 causes of action. Also, the state court preliminary  
25 injunction (holding that Cinco Corporation was not likely  
26 to prevail on prior claims of wrongdoing); confidential  
27 settlement communications do not support allegations;  
28 Cinco Corporation's settlement and release of prior



allegations of wrongdoing.

8) **Affirmative Defense No. 8:** Waiver (asserted by Counterclaim Defendant and Third Party Defendants as to all claims alleged against them)

a. Element No. 1: Through implied and/or express conduct, Counterclaimants knowingly waived a valid right, privilege, advantage, or benefit allegedly conferred upon it and its attempt to enforce that right, privilege, advantage, or benefit is thus barred.

i. This element is disputed

ii. Nature of Dispute: factual

vii. Plaintiff's Supporting Evidence: Both the JVA and AJVA contain an agreement to agree on a Master License Agreement. There was never a written license agreement between Counterclaimants and counter defendants or third party defendants. Counterclaimant entered into a negotiation process with Cinco, prior to SPAVI's acquisition of the Potato Corner brand and all of the Potato Corner Intellectual Property from Cinco, for the terms of a license to use the Potato Corner Intellectual Property. These negotiations began before SPAVI purchased the rights to the Potato Corner IP. So, Counterclaimants have been aware of the lack of ownership rights in the Potato Corner Intellectual Property and the non-existence of a written agreement. Then, between December of 2021 through 2024, the months immediately preceding the filing of this action, SPAVI engaged in a good faith and exhaustive attempt to negotiate the terms of a written license with Counterclaimants as well. Never once did

1 Counterclaimants state that they had ownership rights to  
2 the Potato Corner Intellectual Property, and SPAVI relied  
3 on that representation because had one been expressed,  
4 that would have been a dispute as to the ownership rights  
5 to which SPAVI would have filed this lawsuit sooner.  
6 Instead, Counterclaimants and Counter Defendants  
7 continued to negotiate the terms of a license to use the  
8 Potato Corner Intellectual Property. Additional evidence  
9 includes: Notarized Deeds signed by seller and buyer;  
10 USPTO filings including Registrations and Assignments;  
11 Testimony of Gregorio (Plaintiff's CEO), Magsaysay  
12 (Cinco's CEO), Koren, Ybanez (Plaintiff's General  
13 Counsel), Tan (Director responsible for international  
14 franchising); and emails and correspondence during the  
15 negotiation of the terms of the license agreement.

16 iii. Defendants' Supporting Evidence: SPAVI parties have  
17 not articulated their defense beyond what is included in  
18 their Answers until 7am on August 12, 2025. *See n. 1.* As  
19 it is articulated in the Answers, PCJV Parties cannot  
20 determine the factual basis for the defense. As such, the  
21 out of an abundance of caution, PCJV Parties incorporate  
22 by reference all of the evidence cited in support of their  
23 causes of action. The state court preliminary injunction  
24 (enjoining Cinco Corporation from interfering with  
25 PCJV's President's control over Potato Corner in the  
26 United States and communicating with its franchisees);  
27 confidential settlement communications do not support  
28 any waiver, as Defendants never waived any rights but

1 were trying to settle disputes; Cinco Corporation's  
2 settlement and release of prior allegations and transfer of  
3 the very interests, rights and obligations over which the  
4 parties are now litigating.

5 9) **Affirmative Defense No. 9:** Comparative Fault (asserted by  
6 Counterclaim Defendant SPAVI as to the negligent interference with  
7 prospective economic relations claim)

8 a. Element No. 1: That Counterclaimant was negligent

- 9 i. This element is disputed
- 10 ii. Nature of Dispute: factual
- 11 iii. Plaintiff's Supporting Evidence: Both the JVA and AJVA  
12 contain an agreement to agree on a Master License  
13 Agreement. As such, there was no written license  
14 agreement. Counterclaimant entered into a negotiation  
15 process with Cinco, prior to SPAVI's acquisition of the  
16 Potato Corner brand and all of the Potato Corner  
17 Intellectual Property from Cinco, for the terms of a  
18 license to use the Potato Corner Intellectual Property.  
19 These negotiations began before SPAVI purchased the  
20 rights to the Potato Corner IP. So, Counterclaimants have  
21 been aware of the lack of ownership rights in the Potato  
22 Corner Intellectual Property and the non-existence of a  
23 written agreement. Then, between December of 2021  
24 through 2024, the months immediately preceding this  
25 action, SPAVI engaged in a good faith and exhaustive  
26 attempt to negotiate the terms of a written license with  
27 PCJV as well. Never once did Counterclaimants state that  
28 they had ownership rights to the Potato Corner

1 Intellectual Property, and SPAVI relied on that  
2 representation because had one been expressed, that  
3 would have been a dispute as to the ownership rights to  
4 which SPAVI would have filed this lawsuit sooner.  
5 Moreover, Guy Koren could have, but refused to, engage  
6 in reasonable and good faith negotiation. Instead, he only  
7 offered royalty rates and license fees that were more than  
8 90% below what Koren had agreed to be reasonable  
9 licensing fees over a decade prior. Koren also repeatedly  
10 disengaged from the negotiation process, but still was  
11 utilizing the Potato Corner Intellectual Property.  
12 Additional evidence includes: Notarized Deeds signed by  
13 seller and buyer; USPTO filings including Registrations  
14 and Assignments; Testimony of Gregorio (Plaintiff's  
15 CEO), Magsaysay (Cinco's CEO), Koren, Ybanez  
16 (Plaintiff's General Counsel), Tan (Director responsible  
17 for international franchising); and emails and  
18 correspondence during the negotiation of the terms of the  
19 license agreement.

20 iv. Defendants' Supporting Evidence: SPAVI parties have  
21 not articulated their defense beyond what is included in  
22 their Answers until 7am on August 12, 2025. *See* n. 1. As  
23 it is articulated in the Answers, PCJV Parties cannot  
24 determine the factual basis for the defense. As such, the  
25 out of an abundance of caution, PCJV Parties incorporate  
26 by reference all of the evidence cited in support of their  
27 causes of action. The state court preliminary injunction  
28 (enjoining Cinco Corporation from interfering with

1 PCJV's President's control over Potato Corner in the  
2 United States and communicating with its franchisees); at  
3 all relevant times Defendants exercised control over  
4 Potato Corner in the United States and did not change the  
5 status quo between the parties, including in dealings with  
6 Plaintiff and Plaintiff's predecessor.

7 b. Element No. 2: That Counterclaimant's negligence was a substantial  
8 factor in causing its harm.

- 9 i. This element is disputed
- 10 ii. Nature of Dispute: factual
- 11 iii. Plaintiff's Supporting Evidence: Guy Koren could have,  
12 but refused to, engage in reasonable and good faith  
13 negotiation. Instead, he only offered royalty rates and  
14 license fees that were more than 90% below what Koren  
15 had agreed to be reasonable licensing fees over a decade  
16 prior. Koren also repeatedly disengaged from the  
17 negotiation process, but still was utilizing the Potato  
18 Corner Intellectual Property. In light of the two year  
19 negotiation process that went nowhere, and  
20 Counterclaimant no furnishing any consideration  
21 whatsoever in exchange for the use of the Potato Corner  
22 Intellectual Property, SPAVI concluded that it exhausted  
23 all efforts to negotiate a license agreement with  
24 Counterclaimants. As such, SPAVI had no choice by to  
25 terminate Counterclaimants licensing agreement.  
26 Additional supporting evidence includes: Notarized  
27 Deeds signed by seller and buyer; USPTO filings  
28 including Registrations and Assignments; Testimony of

Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's General Counsel), Tan (Director responsible for international franchising); May 31, 2024 Termination Letter; and emails and correspondence during the negotiation of the terms of the license agreement.

iv. Defendants' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action. The state court preliminary injunction (enjoining Cinco Corporation from interfering with PCJV's President's control over Potato Corner in the United States and communicating with its franchisees); at all relevant times Defendants exercised control over Potato Corner in the United States and did not change the status quo between the parties, including in dealings with Plaintiff and Plaintiff's predecessor

10) **Affirmative Defense No. 10:** Lack or Inadequacy of Consideration (asserted by Counterclaim Defendant and Third Party Defendants as to all claims alleged against them)

a. **Element No. 1:** Counterclaimant has failed or refused to provide anything of value in exchange for the use of SPAVI's license to use the Potato Corner Intellectual Property

i. This element is disputed

1 ii. Nature of Dispute: factual

2 iii. Plaintiff's Supporting Evidence: Despite using the Potato  
3 Corner Intellectual Property for over a decade,  
4 Counterclaimants have never once paid a single cent of a  
5 licensing fee for its use to Cinco nor SPAVI.  
6 Counterclaimants have used Cinco's, and after the asset  
7 purchase, SPAVI's trademark without compensation to  
8 either party. Additional evidence includes: Financial  
9 statements of Counterclaimants evidence that no licensing  
10 fees have ever been paid; Notarized Deeds signed by  
11 seller and buyer; USPTO filings including Registrations  
12 and Assignments; Testimony of Gregorio (Plaintiff's  
13 CEO), Magsaysay (Cinco's CEO), Koren, Ybanez  
14 (Plaintiff's General Counsel), Tan (Director responsible  
15 for international franchising), Concepcion (Plaintiff's  
16 COO charged with US operations); JVA and AJVA;  
17 emails and correspondence with Cinco, SPAVI, Koren,  
18 and PCJV relating to negotiations of a licensing  
19 agreement

20 iv. Defendants' Supporting Evidence: SPAVI parties have  
21 not articulated their defense beyond what is included in  
22 their Answers until 7am on August 12, 2025. *See* n. 1. As  
23 it is articulated in the Answers, PCJV Parties cannot  
24 determine the factual basis for the defense. As such, the  
25 out of an abundance of caution, PCJV Parties incorporate  
26 by reference all of the evidence cited in support of their  
27 causes of action

28 11) **Affirmative Defense No. 11**: Abandonment or Mutual Recession of

1 Contract (asserted by Counterclaim Defendant and Third Party  
2 Defendants as to all claims alleged against them)

3 a. Element No. 1: Counterclaimants license to use the Potato Corner  
4 Intellectual Property was effectively terminated by mutual consent or  
5 that Counterclaimants actions led SPAVI to believe that it was  
6 abandoned.

7 i. This element is disputed.

8 ii. Nature of Dispute: factual

9 iii. Plaintiff's Supporting Evidence: Counterclaimants have  
10 no evidence of a written license to use SPAVI's Potato  
11 Corner Intellectual Property, and, as such, its rights (that  
12 it has sold to its franchisees) derive from what is, at best,  
13 a terminable at will, fully revocable license because  
14 Defendants were nonetheless operating Potato Corner  
15 locations, as if a written license existed. *See Pogrebnoy v.*  
16 *Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d  
17 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th  
18 Cir. 2018) ("[A]n implied license, like any other contract,  
19 is terminable at the will of either party if it is not for a  
20 specified term."). After SPAVI's acquisition of the Potato  
21 Corner brand, it became the licensor of the Potato Corner  
22 Intellectual Property. Between December of 2021 through  
23 2024, the months immediately preceding this action,  
24 SPAVI engaged in a good faith and exhaustive attempt to  
25 negotiate the terms of a written license with PCJV.  
26 Defendant Guy Koren engaged and participated in this  
27 negotiation, but was unwilling to agree to any minimally  
28 commercially viable licensing terms. Moreover, Guy



1 Koren refused to, engage in reasonable and good faith  
2 negotiation. Instead, he only offered royalty rates and  
3 license fees that were more than 90% below what Koren  
4 had agreed to be reasonable licensing fees over a decade  
5 prior. Koren also repeatedly disengaged from the  
6 negotiation process, but still was utilizing the Potato  
7 Corner Intellectual Property. In the three months prior to  
8 the termination of the licensing agreement, Koren had  
9 gone radio silent, leading SPAVI to believe that it no  
10 longer was interested in negotiating a license. Therefore,  
11 SPAVI had no option, but to terminate Coutnerclaimants  
12 license of the Potato Corner Intellectual Property.  
13 Additional evidence includes: Testimony of Koren,  
14 Plaintiff executives Gregorio (Plaintiff's CEO),  
15 Concepcion (Plaintiff's COO charged with US  
16 operations), Tan (Director responsible for international  
17 franchising), Magsaysay (Cinco's CEO); Emails and  
18 correspondence with SPAVI, Koren, and PCJV relating to  
19 negotiations of a licensing agreement for the use of the  
20 Potato Corner Intellectual Property; Amended Joint  
21 Venture Agreement; Franchise Agreements; FDDs; Trial  
22 Exhibit 29 (May 31, 2024 Termination)

- 23 iv. Defendants' Supporting Evidence: SPAVI parties have  
24 not articulated their defense beyond what is included in  
25 their Answers until 7am on August 12, 2025. *See n. 1.* As  
26 it is articulated in the Answers, PCJV Parties cannot  
27 determine the factual basis for the defense. As such, the  
28 out of an abundance of caution, PCJV Parties incorporate

1 by reference all of the evidence cited in support of their  
2 causes of action. Defendants settled with Plaintiff's  
3 predecessor and acquired all of Plaintiff's predecessor's  
4 interests in PCJV and all "attached" rights; it did not  
5 abandon any rights or obligations under PCJV USA,  
6 LLC's governing documents.

7  
8 **IV. Adjudication of Causes of Action, Counter Claims, Third Party Claims,**  
9 **and Affirmative Defenses Not to be Decided by a Jury**

10 The parties request adjudication of the following causes of action, counter  
11 claims, third party claims, and affirmative defenses in the following manner and at  
12 the following time:

- 13 1) At the conclusion of trial, Plaintiff will seek a permanent injunction and  
14 declaratory relief with this Court, as well as for additional relief under the  
15 Lanham Act reserved for this Court. At that time, depending on the jury's  
16 reaction to the § 1125 unfair competition claim, Plaintiff will present that  
17 equitable claim to this Court. Plaintiff will also present at that time its  
18 affirmative defense of "One Who Seeks Equity Must Do Equity."
- 19 2) PCJV USA Parties request the Court to adjudicate PCJV USA Parties'  
20 following causes of action at the conclusion of trial: (1) Declaratory  
21 Relief; and (2) Violations of Business & Professions Code §§ 17200, et  
22 *seq*
- 23 3) PCJV USA Parties request the Court to adjudicate PCJV USA Parties'  
24 following affirmative defenses at the conclusion of trial: (1) failure to  
25 state a claim; (2) consent/acquiescence, ratification, promissory estoppel,  
26 equitable estoppel, and judicial estoppel; (3) unclean hands; (4) laches, (5)  
27 fraud on USPTO, (6) authorized use, (7) public availability of trade  
28 secrets, and (8) lack of at will license agreement

1 The parties abandoned the following claims:

2 1) PCJV USA Parties abandon their Accounting cause of action.

3 2) SPAVI Parties are no longer pursuing the claim for unregistered  
4 trademarks.

14 Dated: August 12, 2025

/s/ Michael D. Murphy

Michael D. Murphy

Matthew Follett

Jessica Nwasike

Fox Rothschild LLP

*Attorneys for Plaintiff and*

*Counterclaim Defendant, and Third*

*Party Defendants*

20 Dated: August 12, 2025

/s/ Arash Beral

Arash Beral

Todd M. Malynn

Blank Rome LLP

*Attorneys for Defendants,*

*Counterclaimants, and Third Party*

*Plaintiffs*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on August 12, 2025, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court’s ECF filing system. I further certify that all counsel for all parties to this action are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: August 12, 2025

**FOX ROTHSCHILD LLP**

/s Michael Murphy  
Michael D. Murphy  
Attorneys for Plaintiff and Counterclaim  
Defendant SHAKEY’S PIZZA ASIA  
VENTURES, INC. and Third Party  
Defendants CINCO CORPORATION,  
PC INTERNATIONAL PTE LTD., and  
SPAVI INTERNATIONAL USA, INC.